

THE APPLICATION OF FAMILY GROUP CONFERENCING
AS A CHILD JUSTICE INTERVENTION IN SOUTH AFRICA

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DECLARATION

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I declare that “The application of family group conferencing as a child justice intervention in South Africa” is my own work and that all the sources used or quoted have been indicated and acknowledged by means of complete references. I further acknowledge that this research has not been previously submitted to the University of South Africa or any other institution of higher learning for examination. I further confirm that this research was language edited.

Signature

(Tarryn Jane Roy)

Date

DEDICATION

This dissertation is dedicated to children who have little hope. May you find the courage to overcome, may you dream the impossible, and may you always find a helping hand and compassionate guide along the way.

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ABSTRACT

The aim of this study is to consider the application of family group conferencing (FGC) as child justice intervention for children in conflict with the law. An exploratory qualitative approach was followed to provide insight into the perceptions of experts with regards to the suitability of FGC for South Africa and for children, as well as the current application of, and potential context and scope for the application of FGC as a South African justice intervention.

Semi-structured interviews were used as the data collection tool. Accordingly, experts from diverse disciplines, to wit social work, psychology, criminology, law, and education (and sub-speciality in FGC and restorative justice), were interviewed telephonically, face to face or via video chat. The sample was collected using purposive sampling through perusal of research articles and academic electronic sites, as well as snowball sampling whereby potential participants were identified.

The findings show that FGC is an ideal intervention within the South African criminal justice context, and more particularly for child justice. The inclusion of family was noted as specifically important in dealing with children, and within an Afrocentric, Ubuntu-laden, socio-cultural environment. Furthermore, the suitability of FGC to the South African child justice context was linked to victim support and inclusivity, reconciliation aims, cultural flexibility, and ability to support offenders yet hold them accountable without criminalisation.

Findings reiterated that FGC is inclusive of support persons, whilst Victim-Offender Mediation (VOM) is not. Resultantly, and with due consideration for the importance of support persons in child related interventions, the necessity of an amendment to the Child Justice Act 75 of 2008 (CJA) - pertaining specifically to VOM - is advocated. Provisions for the implementation of FGC in a child appropriate manner were recommended, namely, adequate preparation; age, needs, and context consideration; maintenance of safety and respect of all parties; and adequate facilitation.

The findings regarding the current application of FGC as a child justice intervention in South Africa evinced that it is rarely implemented due to a lack of funding and

resources, hesitancy of criminal justice professionals, and a decrease in diversion referrals due to a lack of knowledge and poor performance of the South African Police Services (SAPS).

With the aim of extending and promoting FGC, findings noted the necessity for awareness and educational campaigns for both community and criminal justice persons; a multi-dimensional approach whereby various disciplines, societal sectors, government, and civil society work collaboratively; and lastly the importance of the launch of South African Restorative Justice Accreditation Board (SARJAB), an accreditation board for restorative justice practitioners was noted. Recommendations with regards to the findings were made with calls for advocacy, action and further research.

KEY TERMS:

children in conflict with the law, child justice interventions, restorative justice, family group conferencing, Ubuntu, diversion, correctional interventions

ISIFINYEZO ESISUKETHE UMONGO WOCWANINGO

Inhloso yalolu cwaningo ukubheka ukusebenza kwenqubo ye-family group conferencing (FGC) njengendlela yokungenelela ukusizana nezingane ezinqubuzana nomthetho. Kulandelwe inqubo ye-exploratory qualitative approach, ukuhlinzeka ngemibono yochwepheshe ngendlela ababona ngayo ukufaneleka kwe-FGC eNingizimu Afrika kanye nezingane, kanye nokusetshenziswa kwale nqubo manje, nokumumethwe yisimo kanye nokwendleleka kwe-FGC njengenqubo yokusiza kwezomthetho nezinkantolo eNingizimu Afrika.

Kusetshenziswe ama-semi-structured interviews njengethuluzi lokuqoqa ulwazi. Ngakho-ke, ochwepheshe bemikhakha ehlukeneyo, efana neye-social work, isayikholoji, i-criminology, umthetho nemfundo (umkhakhana kwi-FGC kanye nenqubo yokulungisa nokubuyisela kahle kwisimo kulabo abonelwe kwezobulungisa, kwenziwe ama-interview ngezinguqo, ukubhekana ubuso nobuso kanye nokwenza izingxoxo

ngamavidiyo. Kuqokelelwe isampuli ngokusebenzisa i-purposive (ukufunda ama-atikili ezocwaningo kanye nama-sayiti esiakhademiki ngendlela ye-elektroniki) kanye nokwenza amasampuli ngendlela ye-snowball, lapho khona okwaphawulwa khona ababambi qhaza kucwaningo.

Okutholakele kukhombisa ukuthi inqubo ye-FGC yiyo elungile kwinqubo yezomthetho nezinkantolo zobugebengu eNingizimu Afrika, ikakhulukazi lapho kubhekane nomthetho nezinkantolo nobulungisa maqondana nezingane. Ukubandakanywa komndeni kuqashelwa njengento ebalulekile ekubhekaneni nezingane, kanti futhi kwinqubo ebonelela indlela yobu-Afrika, indlela egxile kubuntu kanye nokubonelela amasiko endabuko yesintu. Kanti futhi okunye, ukufaneleka kwenqubo ye-FGC kwisimo seNingizimu Afrika sokubhekana nenqubo yomthetho yobulungisa maqondana nezingane, kuxhumene nokusekelana nabonelwe zingane ngendlela eyongamelayo, izinhloso zokubuyisana, ukuguquguquka kwezendabuko kanye nekhono lokusekela abonile, kodwa ngendlela yokuqikelela ukuthi izingane zibhekane nezenzo zazo ngaphandle kokuzibona njengezigebengu.

Lezi zinto ezitholakele ngocwaningo, ukuthi inqubo ye-FGC ibandakanya ukusekela abantu, kodwa inqubo yokuqikelela ukuthi kube nokubonisana nabonelwe ngenqubo ye-victim-offender mediation (VOM) ayikuboneleli lokhu. Ngenxa yalokhu, kanti futhi ngokubonelela ukubaluleka kokusekela abantu kwinqubo yokungenelela ukusizana nezingane, umcwaningi uphakamisa ukuthi kuchitshiyelwe umthetho wokubhekana nezinkantolo nezingane, umthetho we-Child Justice Act (CJA) 75 ka 2008 – oqondene nenqubo ye-VOM. Kunconywa izindlela zokusebenza nge-FGC ngendlela ebonelela izingane, ngokwenza amalungiselelo afanele; ukubonelela iminyaka yobudala, izidingo kanye nezimo; ukuqikelela ukuphepha kanye nenhlonipho yazo zonke izinhlangathi ezithintekayo, kanye nosizo ngokuxhumanisa.

Okutholakele maqondana nokusetshenziswa kwamanje kwenqubo ye-FGC njengendlela yokungenelela ukusizana nezingane kwinqubo yezomthetho nezinkantolo eNingizimu Afrika kuyinqubo engasetshenziswa ngokwanele ngenxa yokusweleka kwezimali neminye imithombo yosizo, ukungabaza kulabo ababhekene nenqubo yezinkantolo o nobulungisa; kanye nokuncipha kwenqubo yokubonelela ezinye izindlela ezakhaya ngaphandle kokusebenzisa izinkantolo maqondana

nezingane, ngenxa yokusweleka kolwazi, ukungasebenzi ngezinga elifanele kwenqubo yezamaphoyisa aseNingizimu Afrika, abe-South African Police Services (SAPS).

Ngenhloso yokunabisa kanye nokuqhubela phambili i-FGC, umcwaningi, uphawula isidingo sokuqwashisa kanye nemikhankaso yemfundo emiphakathini kanye nakubantu abasebenza ezinkantolo ezibhekana nobulungisa; inqubo enezinhloka ezehlukahlukile, lapho kusetshenziswa khona imikhakha ehlukene, abantu besizwe, uhulumeni, izinhlangano zemiphakathi, ukuthi yonke le mikhakha isebenzisane; kanti okokugcina, ukusungula inhlangano yaseNingizimu Afrika ye-South African Restorative Justice Accreditation Board (SARJAB) ukuze abasebenza ngenqubo yobulungisa nokubuyisela okulungile kulabo abonelwe basebenzise yona. Izincomo maqondana nokutholakele kucwaningo kwenziwa ngokwenza isimemezelo sokugqugquzelela ukwenziwa kwenqubo, izinyathelo kanye nolunye ucwaningo.

AMATHEMU ABALULEKILE:

indlela yokungenelela ngezomthetho nezinkantolo ngobulungisa lapho kubhekwana nezingane, izingane ezingqubuzana nomthetho, izindlela zokuqondisa izimilo, ukusebenzisa ezinye izindlela ezakhaya ngaphandle kwezinkantolo maqondana nezingane (diversion) inqubo ye-family group conferencing, ubulungisa bokulungisa okunakele, ubuntu

SELELEKELA

Maikemisetso a patlisiso ena ya boithuto ke ho shebana le tshebediso ya seboka sa sehlopha sa lelapa (*family group conferencing (FGC)*) jwalo ka mohato ho toka ya ngwana bakeng sa bana ba iphumanang ba le kgahlano le molao. Ho latetswe katamelo ya phuputso ka boleng, ho fana ka lesedi mabapi le maikutlo a ditsebi hodima ho tshwaneleha ha FGC bakeng sa Afrika Borwa le bana ba yona, hammoho le tshebediso ya hajwale, le dikateng le bophara bo ka bang teng ba FGC jwalo ka mohato wa toka wa Afrika Borwa.

Ho sebedisitswe diinthavu tse sa hlophiswang ka botlalo ho bokelletsa datha. Ka mokgwa oo, ditsebi ho tswa makaleng a fapaneng, a jwalo ka tshebeletso ya setjhaba, dithuto tsa kelello ya motho le mesebetsi ya yona, dithuto tsa botlokotsebe, molao le thuto (lekala le tlasana la FGC le toka ya puseletso), di ile tsa botswa dipotso ka mohala, mahlong kapa ka puisano ya vidiyo. Sampole e bokelleditswe ka mokgwa wa thero (*purposive*) (ho balwa ha dingolwa tsa dipatlisiso le diwebosaete tsa elektroniki tsa dithuto) hammoho le mokgwa wa disampole o bitswang *snowball*, moo teng bao e ka bang bankakarolo ba ileng ba hlwauwa.

Diphetho di supa hore FGC ke mohato o loketseng boemo ba Afrika Borwa ba toka ditlolong tsa molao, haholo bakeng sa toka baneng. Ho kenyelletswa ha lelapa ho bonwa ho le bohlokwa ho fetisisa tshebetsanong le bana, le tikolohong ya boAfrika, e kgannwang ke setso le bophelo ba ubuntu. Ho feta moo, ho tshwaneleha ha FGC ditabeng tsa toka ya bana Afrika Borwa ho hokahanngwa le tshebetso ya mahlasipa le kenyelletso, maikemisetso a tshwarelano, ho fetoha ha setso le bokgoni ba ho tshehetsa batlodi ba molao, empa ba ntse ba jariswa maikarabello ntle le ho ba etsa ditlokotsebe.

Diphetho di netefatsa hore FGC e kenyeletsa batho ba tshehetsang, ha puisano pakeng tsa lehlaspisa le motlodi wa molao (VOM) ese jwalo. Ka lebaka leo, mme le ka ho nahanela bohlokwa ba batho ba fanang ka tshehetso mehatong e amanang le bana, mofuputsi o bulella ho fetolwa ha Molao wa Toka ya Bana (CJA) 75 ya 2008 – e amanang ka kotloloho le VOM. Ho kgothaletswa maemo a ho kenya FGC tshebetsong ka tsela e loketseng bana, ka boitokiso bo lekaneng; kamohelo ya dilemo, ditlhoko le dikateng; poloko ya tshireletseho le hlompheo ya baamehi bohle; le tataiso e loketseng.

Diphetho tse mabapi le tshebediso ya hajwale ya FGC jwalo ka mohato wa toka baneng Afrika Borwa di supa hore hase hangata e sebediswang ka lebaka la tlhokeho ya tjhelete le disebediswa, qeyaqeyo hara ditsebi tsa toka botlokotsebeng, le phokotseho ya diphetiso ka lebaka la ho hloka tsebo le tshebetso e mpe lehlakoreng ya South African Police Services (SAPS).

Ka maikemisetso a ho atolosa le ho phahamisa FGC, mofuputsi o lemosa tlhoko ya tsebo le matsholo a thuto bakeng sa setjhaba le batho ba sebetsang ka toka botlokotsebeng; katamelo ya makala a mangata moo makala a fapaneng, dikarolo tsa setjhaba, mmuso le setjhaba ba sebetsang mmoho; mme qetellong, bohlokwa ba ho theha Boto ya Toka ya Puseletso le Tlhwao ya Afrika Borwa (*South African Restorative Justice Accreditation Board (SARJAB)*) bakeng sa basebeletsi ba toka ya puseletso. Dikgothaletso tse mabapi le diphetho di etswa ho ntse ho kotjwa tshehetso, ketso le dipatlisiso tse eketsehileng.

MANTSWE A BOHLOKWA:

mehato ya toka baneng, bana ba kgahlanong le molao, mehato ya tokiso, phapano, dikopano tsa sehlopha sa lelapa, toka ya puseletso, ubuntu

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ACRONYMS AND ABBREVIATIONS

ADRM	Alternative dispute resolution mechanisms
CJA	Child Justice Act 75 of 2008
DCS	Department of Correctional Services
DSD	Department of Social Development
FGC	Family group conferencing
JARP	Justice and Reconciliation Programme
NDPP	National Director of Public Prosecutions
NGO	Non-governmental organisation
NPA	National Prosecuting Authority
SAPS	South African Police Services
SARJAB	South African Restorative Justice Accreditation Board
ACRWC	The African Charter on Rights and Welfare of the Child
NICRO	The National Institute for Crime Prevention and the Reintegration of Offenders
UNCRC	United Nations Convention on the Rights of the Child
UNISA	University of South Africa
VOM	Victim offender mediation
YES	Youth Empowerment Scheme

CHAPTER 1

GENERAL OVERVIEW AND INTRODUCTION TO THE STUDY

“Each of us as citizens, has a role to play in creating a better world for our children”
(Mandela, 2002).

1.1 INTRODUCTION

Chapter one will provide a general overview of the study starting with a rationale, followed by the aim, objectives and research questions of the study and the significance of the research. Key definitions relevant to the study will then be provided and lastly a brief summary of each chapter will be presented.

The Child Justice Act (CJA) provides a criminal justice system specifically suited for child offenders in South Africa. The importance of child-centred justice is reiterated in the preamble of the Act, wherein it especially acknowledges the Constitution of the Republic of South Africa, 1996 – more pertinently section 28(2) which entrenches the best interests of the child as of paramount importance in all decisions pertaining to a child. The preamble is also a nod to international legislative mandates as per international instruments, which have been ratified by South Africa, regarding the rights of children in conflict with the law. Resultantly the Act makes specific provision for restorative justice, diversion over incarceration, child rights, and victim and offender rights. As per section 2(a) of the CJA, the spirit of Ubuntu is enshrined throughout the Act and lends itself to a more Afrocentric approach to adjudication in criminal matters, which were previously a domain of adversarial design. Of central concern to this thesis is section 61 of the Act which provides for a specific restorative justice intervention in the form of family group conferencing (FGC).

FGC is a fully restorative option which is philosophically Afrocentric, child appropriate, and supported by applied research. While the latter is evinced in research there appears to be a paucity of literature pertaining specifically to the application of FGC

as a child justice intervention within the South African context specifically, which lends impetus to this research.

1.2 STUDY RATIONALE

South African children are exposed to a broad and varied range of socio-economic disparities including poverty and unemployment; weak social cohesion; family disruption; race, class and social and economic inequalities; the damage of apartheid and globalisation; crime and violence; mental health issues; substance abuse; and peer pressure to list but a few (Els, 2012:48; Hargovan, 2013:25-26; Ikpe & Coker, 2010:223; Maree, 2018:83-98; Songca, 2018:77). These form causal risk factors of victimisation and criminality, and resultant victim-offender duality. Indeed, research often indicates that offenders are most often also victims (Freng & Taylor, 2010:506, Hargovan, 2013:25-26, Maree, 2018:87, World Health Organization, 2017:np). Songca and Karels (2016:448), for example, posit that children who develop within environments of domestic violence and sexual inappropriateness, are more likely to sexually offend than children who are not exposed to these conditions.

Added to the above, crime and violence have become internalised and a normalised part of daily life for many South African children (Maree, 2018:87). It is thus perhaps not surprising that the foremost crimes committed by children in the 2017/2018 fiscal year included assault, possession/use of drugs, theft, rape, housebreaking, robbery, malicious injury to property and murder (Department of Justice and Constitutional Development, 2018:24-26). The top three forms of crime include assault with intent to do grievous bodily harm, possession/use of drugs and theft (Department of Justice and Constitutional Development, 2018:24-26). Perhaps more alarmingly, murder and rape rates increased during the same period demonstrating that children are becoming more violent (Department of Justice and Constitutional Development, 2018:24-26).

When crime statistics are read with everyday media reports regarding children and crime, it is imperative that any intervention within this vulnerable population must be contextually relevant and aid in breaking the cycle of crime and victimisation. It is trite that no criminal justice system ought to consider or treat a child offender with the same measures as it would an adult. The child's context and developmental abilities must

be taken into account and the offence measured against the fact that incarceration as a punishment option is problematic for the child population (Buckingham, 2013:832-853; Swanzen & Harris, 2012:5-6).

Incarceration is damaging to child offenders, perpetuates the cycle of offending, fails to reduce recidivism and is ultimately financially burdensome on the state (Buckingham, 2013:815-816; Tsui, 2014:641; Wong, Bouchard, Gravel, Bouchard & Morselli, 2016:1311). Imprisonment negatively affects a young person's future, potential reintegration, and rehabilitation because it results in a criminal record, increases stigmatisation, reduces educational and developmental opportunities, and decreases the development of skills and knowledge necessary to reintegrate into society once released (Buckingham, 2013:815-816; Dzur, 2017:484; Tsui, 2014:641; Wong et al., 2016:1311). In addition, young offenders who are incarcerated for their crimes are separated from positive peer networks and placed into potentially criminogenic environments. Research has demonstrated that prisoners often learn criminal skills and create networks whilst detained (Richards, 2011:7).

The use of incarceration as an intervention for child offenders is inappropriate. Perhaps a more sensible approach would include consideration of the child's context and environment and embrace their potential to grasp the consequences of their behaviour, develop pro-social thinking habits, and ultimately change their behaviour (cf. Buckingham, 2013; Schoeman, 2010:10; Tsui, 2014:645). Children are more amenable to positive and successful rehabilitation than adults because developmentally they have a higher response rate to change anti-social behaviour into pro-social behaviour (cf. Buckingham, 2013; Schoeman, 2010:10; Tsui, 2014:645). Thus, it is necessary for the criminal justice system to include developmentally appropriate interventions for children who come into conflict with the law and to provide them with the chance to become responsible law-abiding citizens (cf. Buckingham, 2013; Schoeman, 2010:10; Tsui, 2014:645).

The CJA was ratified in 2008, and officially came into effect on 1 April 2010 (Songca, 2018:85; Steyn, 2010:1-2). The preamble acknowledges the injustices of apartheid in the lives of children, as well as the contexts that cause children to commit crime, and provides the groundwork for restorative legislation. A particular success of the CJA is

seen in the incorporation of diversion and restorative justice interventions, including FGC, which allows for needs-directed rehabilitation and developmental programmes (Schoeman & Thobane, 2015:45-46).

Restorative justice and Ubuntu (a central value of South African constitutionalism) are grounded on similar philosophies (Kilekamajenga, 2018:115, Murhula, Singh & Nunlall, 2019:31; Reyneke & Reyneke, 2010:360-361, Songca, 2018:89, Zehr & Gohar, 2002:17-18). Both view crime as a conflict between individuals which harms individuals, communities and relationships and premises resolution on reconciliation and resolving harm as opposed to hard justice. Restorative justice – read with its inclusion of Ubuntu – introduces the victim, the community, and the offender, as new role-players in justice as opposed to mere players of state controlled intervention (Anderson, 2017:166; Fraser, 2017:162; Schoeman, 2014:np; Zehr, 1990:182-186; cf. Zehr & Gohar, 2002:17). Restorative justice therefor premises intervention on the restoration of relationships that were damaged by the harm caused by the crime committed.

The three main restorative justice interventions frequently implemented include sentencing circles, VOM, and FGC (Schoeman, 2014:np; Wilson, Olaghere & Kimbrell, 2017:4). The CJA does not make specific mention of sentencing circles, however, section 53 provides for the use of FGC and VOM as diversion options, and section 73 provides for their use during sentencing.

VOM is discussed in section 62 of the CJA as an informal procedure intended to bring the alleged child offender and victim together to develop a plan aimed at redressing the effects of the offence. FGC is mentioned in section 61 as an intervention that brings the offender, victim, their family, and other necessary parties together to discuss the offence, and create a restitution plan. Although similar to VOM, in that it aims to bring healing and restitution, FGC differs in that it allows for family and community to participate as opposed to only the victim and offender (Zehr & Gohar, 2002:49-50). This aspect is discussed in more detail in chapter 3.4.

The purpose of FGC is to aid the victim, offenders, and their supporters in an open and honest discussion about the crime and its impact. This in turn provides

forgiveness, healing, and restitution and aids the offender to accept accountability for the offence (Kuo, Longmore & Cuvelier, 2010: 319; Naylor, 2010: 665-666; Schoeman, 2014:np). FGC also aims to heal, and repair broken relationships caused by crime. Family members and the community play an important role in the reintegration, support, and healing of the offender; and in so doing family members and the community are empowered and healed (Tshem, 2009:32-33).

The aim of this research is to consider whether FGC is indeed an ideal child justice intervention in a South African context. Provisionally FGC appears to be culturally suitable since traditional African justice is guided by Ubuntu and - as mentioned - FGC is consistent with Ubuntu values (Gxubane, 2018:6; Kilekamajenga, 2018:152-153; Songca, 2018:87-89). Restoration is further entrenched in section 2(b) of the CJA, which aims to promote the spirit of Ubuntu. Sloth-Nielsen and Gallinetti (2011:79) opine that the inclusion of sentencing and diversion options such as FGC, which involve collective dialogue between offenders, victims, family, and community, shows communitarian values indicative of Ubuntu. FGC is furthermore Afrocentric in its similarity to the Sotho practice of *Lekhotla* which will be discussed in more detail in Chapter 4 (Gxubane, 2012:108). For this study, the researcher focusses on the applicability of FGC within the diverse cultural environment evident in South Africa.

FGC appears to be especially child appropriate. Gxubane (2012:113) considers it a more suitable restorative justice option for child offenders due to its inclusion of family and posits that it is essential to involve willing families when working with child offenders. There is evidence that familial relationships and parental involvement have a positive influence on rehabilitation, accountability, lowering of behavioural issues, recidivism, and community reintegration; and FGC provides much needed emotional support and belonging (Walker, Bishop, Pullman & Bauer, 2015:413). From the research it is evident that FGC and other family-based interventions have produced the strongest results for familial impact on youth recidivism (Walker et al., 2015:414). If parents are the root cause of the child's issues, FGC will assist in highlighting a need and provide an appropriate intervention in this regard (Gxubane, 2016:8-10).

FGCs are also especially suited to child justice as it caters to the context as well as developmental needs of children (Buckingham, 2013:810). The child offender is made

aware of the negative effect of their crime and the impact of having a criminal record and presented with an alternative means of conflict resolution (Steyn, 2010:112). The child offender may then reflect on the situation and his/her role therein in an unpressured environment, and with the support of family and other mature adults. Children are provided with decision-making skills and the opportunity to use them, and afforded the chance to learn from their mistakes, apologise, repent, and own responsibility. In addition, they are taught empathy, compassion, and remorse, and instilled with a desire to change (Buckingham, 2013:858-859).

International research has shown promising results for FGC as a child justice intervention (Bradshaw & Roseborough, 2005:24-26; Calhoun and Pelech, cf. 2013; Chan, 2013:12-16; Dzur, 2017:488; Fraser, 2017:185-187; Gal & Moyal, 2011:1019; Kim & Gerber, 2012:1070-1075; Leonard & Kenny, 2011:64; McGarrell & Hipple, 2007:230-238; Mongold & Edwards, 2014:206-212; Payne & Weatherburn, 2015:349, Wilson et al., 2017:5-6; Zernova, 2007:492-498). Limited research has however been undertaken on FGC as a child justice intervention within the South African context. What South African literature is available on the topic has been found to be limited by currency and/or the use of small samples which generally negatively affects generalisability. The studies that have been conducted however have found a number of positive results as well as concerns and cautions (Anderson, 2017:175; cf. Dewa, 2013; Els, 2012:21-22; cf. Gxubane, 2012a;cf. Gxubane, 2016;cf. Gxubane 2018;cf. Janse van Rensburg, 2010; Songca & Karels, 2016:444-445; cf. Steyn, 2010; cf. Tshem, 2009;cf).

FGC is also a fully restorative option as established by Reyneke and Reyneke (2010:373-378) who measured the successfulness of restorative justice programmes implemented by the Mangaung One-Stop Child Justice Centre. The authors found that VOM and FGC were the only two fully restorative interventions. However, they also found that less than 1% of cases involved the use of these interventions (Reyneke & Reyneke, 2010:365-367). The number of restorative justice interventions handed down as sentences in recent years has been minor; only one in 2015/2016, three in 2016/2017 and four in 2017/2018, and in the financial year end 2017/2018, only 26% of preliminary enquiries resulted in diversion (Department of Justice and Constitutional Development, 2018:24-37). It is necessary to determine why FGC is not used more

frequently if it could potentially be in the best interest of child offenders to do so, thereby reflecting the implementation and application of the constitutional best interest standard.

In light of limited studies within the South African context it is important to consider whether experts in the field of restorative justice and FGC, agreed that FGC is suitable to both the South African, and child justice context. Furthermore, it is necessary to consider their experiences, opinions, and perspectives regarding the application of FGC in the South African child justice arena, in order to determine the validity of its aims and objectives as stated in the CJA. This in turn provides scope and context for the future application of FGC within South Africa. Against this background the aim and objectives for the study will be discussed.

1.3 RESEARCH AIM AND OBJECTIVES

The aim of research is defined as what the researcher wants to do or achieve, or more broadly stated - the researcher's 'dream.' Objectives also refer to what is to be achieved, but are concrete, measurable, and speedily attainable ideas. They provide the steps to be taken to achieve the dream (de Vos, Strydom, Fouché, Delport, 2011:94).

The aim of this research was to explore the application of FGC as a child justice intervention in South Africa. The overarching aim in turn reflects the necessity to provide recognition of the scope, and possibilities for implementing FGC as a child justice intervention in South Africa.

The following objectives were proposed to attain the overarching aim stated above:

- i. To determine if FGC is a suitable intervention within a South African child justice context.
- ii. To provide insight into the perceptions of experts regarding the application of FGC as a child justice intervention in South Africa.
- iii. To consider the context and potential scope of application of FGC as a child justice intervention in South Africa.

The following research questions were posed and answered to achieve the aim and objectives:

- a) Is FGC a suitable intervention for South African children that come into conflict with the law?
- b) What are the perceptions of experts regarding the application of FGC as a child justice intervention in South Africa?
- c) What is the context and potential scope for application of FGC as a child justice intervention in South Africa?

1.4 SIGNIFICANCE OF THE STUDY

Research provides a number of contributions that are significant to academia and society. The predicted contributions in turn may play a role in decision making (Davies & Francis, 2018:7-11). Based on the aims and objectives of the study, the following research contributions are foreseen:

- **Contribute to the expansion of the knowledge base regarding the application of FGC within a South African child justice context**

Although South African and regional academics engage in research on restorative justice, there is a paucity of research specifically focused on FGC in the South African child justice context (Batley & Skelton, 2019:27). It is necessary for individual interventions, such as FGC, to be considered on their merits and therein to determine if, how, why and where they work (Gxubane, 2016:19; Hargovan, 2011:78). The research therefore aims to consider the application of FGC (the if), how, why and where it works, based on the opinions of experts in the field; in an attempt to add to the knowledge base of restorative justice, criminology, and child justice in South Africa.

- **Provide guidelines for the implementation of FGC within the child justice sector**

By adding to the knowledge base, the research also contributes to practical implementation. Gxubane (2016:19) notes that findings should be available to practitioners who implement interventions as this provides awareness and knowledge

to implement innovative interventions. It is posited that the findings of this study will provide awareness, as well as justification to practitioners so that, where ideal, the intervention of FGC may be implemented more often and more effectively for children in conflict with the law.

It is further anticipated that where services are being implemented; the findings of this study will provide practitioners with knowledge to improve their services where necessary. The findings of this study aim to ensure that when implemented, FGC upholds the best-interests principle in dealings with all children, both those in conflict with the law as well as victims of crime.

→ **Provide insight into the perceived lack of application of FGC in the current South African child justice context**

According to Holler (2015:25) FGC is arguably the most widely used restorative justice intervention worldwide. Yet, although provided for in legislation, it would appear that its applicability is not as favourably inclined in the South African context. The findings of this study will hopefully shed light on the reasons for the lack of implementation of FGC within child justice in South Africa. This could in turn achieve two outcomes; firstly, the reasons for lack of implementation can be addressed, and secondly practitioner awareness of the potential of FGC in a South African child justice context may be heightened.

1.5 CONCEPTUALISATION OF KEY CONCEPTS

In the section below, key concepts relevant to the study were defined and conceptualised.

1.5.1 Restorative justice

As a result of its diverse roots and various forms and methods of implementation, restorative justice does not have a universally accepted definition but is rather characterised according to its principles, aims, practices, processes, and values (Schoeman, 2014:np; Ward & Langlands, 2008:358; Weitekamp, 2010:780). Restorative justice assumes that crime is primarily a conflict between individuals that

causes harm to people and relationships, and that justice should therefore serve to reconcile parties and address the harm caused (Schoeman, 2014:np).

Harm is addressed through processes and practices inclusive of the values, principles and aims of restorative justice. Dialogue, reconciliation, accountability, restitution, reparation, forgiveness, inclusiveness, transformation, honesty, healing, fairness and the maintenance of the dignity and respect of each person affected by the offence are all key characteristics of restorative justice (Fraser, 2017:162; Schoeman, 2014; Ward & Langlands, 2008:358; Weitekamp, 2010:780-781; Zehr, 1990:182-211). Zehr and Gohar (2002:40) opine that, in practical terms, restorative processes involve, as far as possible, all parties with a stake in the offence; to identify and address the harms, needs and obligations arising as a result of the offence, to provide healing for all and to restore the status quo to the extent possible.

Section 1 of the CJA provides the following definition which is consistent with that provided by Zehr and Gohar, and which is in line with the values and principles of restorative justice, but which is specifically focused on children in conflict with the law:

“...an approach to justice that aims to involve the child offender, the victim, the families concerned and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation.”

This definition is of relevance in the study since the unit of analysis focuses on the application of FGC in South African child justice.

1.5.2 Family group conferencing (FGC)

FGC cannot be defined separately from restorative justice as it is a restorative justice intervention and thus is inclusive of the above characteristics relevant to restorative justice (Steyn, 2010:101). The process of FGC originated in New Zealand, and the New Zealand government defines it as a meeting between the young person who broke the law, their family, the victim, and other people; for example the police, service providers, social workers or youth advocates (New Zealand Government, 2019:np). Zehr (2004:306) is in agreement, stating that FGCs are similar to VOMs but include a broader circle of participants, including victims and offenders, family members, police, and others.

The Western Cape government (2019:np) adds that FGCs include all persons who are significant in the life of the offender, and the victim and their support persons in coming together to make decisions about the child who committed the crime, and to heal broken relationships. This definition is important in the South African context, because it allows both victims and offenders to have support persons present, regardless of their affiliation (family, friends, etc.), as is clear in the definition provided by the CJA.

Section 61 of the CJA defines FGC as an informal procedure which brings together a child who has allegedly committed a crime, the victim/or victims of the crime, along with their family and other appropriate persons for support; to develop a plan whereby the child can make reparations for the negative effects of the crime. As this research is relevant to the CJA, this definition will be used.

1.5.3 Child

Article One of the United Nations Convention on the Rights of the Child (UNCRC), a key instrument in dealing with children, provides that the term 'child' refers to any human being under the age of 18 years, unless majority is attained earlier under the law applicable to the child. South African legislation provides the same definition. Section 1 of the Children's Act 38 of 2005 and section 28 (3) of the Constitution provide that a child is any person who is under the age of 18 years.

Section 1 of the CJA also states that anyone under the age of 18 years is a child. Additionally, as discussed in section 4(2) of the CJA, if a child is under the age of 18 at the time of commission of an offence, but between 18 and 21 years of age when receiving a written notice or summons, or is arrested, the National Director of Public Prosecutions (NDPP) may allow the implementation of a preliminary enquiry and/or diversion. The definition supplied by the CJA is relevant to this research and in this regard, the terms 'child offender' or 'child in conflict with the law' refer to a child under the age of 18 years at the time of the commission of the crime, and includes parties between 18 and 21 years as per the above discussed circumstances provided for in section 4(2) of the CJA.

1.5.4 Victim

Article One of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that a victim is anyone who has suffered physical, mental, emotional or economic harm, or the substantial impairment of their fundamental rights from an act or omission that violates the criminal laws of the applicable state. Where appropriate, this includes immediate family or dependents of the direct victim, and those who have suffered harm through intervening in an attempt to assist the victim and prevent victimisation. The South African Victim's Charter and Minimum Standards have adopted the same definition (Department of Justice and Constitutional Development, 2008:8).

Likewise, Schoeman (2012:82-83) provides that primary crime victims are those directly affected financially, physically, mentally, or emotionally by the commission of a crime. She also acknowledges secondary crime victims; to wit family members who feel the effects of the crime due to their close relationships with the victim, but adds that this group also includes friends, and others in the primary victim's close community. Schoeman (2012:82-83) then provides a third victim type not noted by the above sources; namely tertiary crime victims who experience crime vicariously through the media. The effects of the last category are often unrecognised but can be similar to those suffered by secondary victims.

The definition supplied by Schoeman is most applicable to this research. In this regard, primary (those directly victimised), secondary (their family and friends) and tertiary victims (community members) are offered an opportunity to participate in FGC.

1.6 OVERVIEW OF THE STUDY

This dissertation is comprised of seven chapters. A summary of the content of each chapter will be provided below:

Chapter 1: This chapter provides a general overview of the study. The rationale for the study is provided to orient the reader with regards to the context and justification for the study. The research aim, objectives and questions are provided, the

significance of the study is discussed, therein followed by key definitions relevant to the research.

Chapter 2: The focus of this chapter is placed on the history of child justice in South Africa. A comparison of restorative and retributive justice is presented, followed by a discussion of the events that led to the enactment of the CJA and its inclusion of restorative justice and Ubuntu. An explanation of restorative justice and its link to Ubuntu is then provided.

Chapter 3: An in-depth exploration of FGC is provided in this chapter. The purpose and process of FGC is explained, followed by a revision of its place within the CJA and a comparison between FGC and VOM. Lastly, international, and national findings pertaining to FGC are analysed, followed by a discussion of the application of FGC in South Africa.

Chapter 4: This chapter positions restorative justice and FGC within an Afrocentric philosophical framework. The researcher then discusses the theoretical underpinnings of restorative justice and FGC.

Chapter 5: The methodology applied in this research is discussed in detail inclusive of the research design, sampling design, data collection and data analyses methods used. The limitations, validity, and reliability, as well as ethical considerations of the research is also presented.

Chapter 6: In this chapter the researcher presents the findings of the research. A biographical presentation of each participant is provided, followed by a discussion of findings related to the difference between FGC and VOM, the suitability of FGC in a child justice South African context, and the current application of FGC within this same context

Chapter 7: In conclusion, chapter 7 provides conclusions regarding the findings of this study and their relation to the objectives of the study. The chapter concludes with recommendations related to advocacy, action, and further research.

1.7 CONCLUSION

Songca and Karels (2016:451) state that when one considers the violence children have had to endure as citizens of South Africa, the importance of applying a restorative approach cannot be overstated. Internationally FGC has been hugely successful and would prima facie appear the ideal child justice intervention for a South African context based on its contextual approach and link to Ubuntu, which subsequently involves family and the community in restoring harm and protecting the best interests standard, while not neglecting the victim.

It would, however, be unwise to accept its suitability to the South African child justice context without providing evidence that it is indeed suitable. If it is indeed suitable, information is needed pertaining to how and where it is most appropriate. Thus, the aim of this research was to question experts in the field of restorative justice and FGC regarding the Afrocentricity and child centredness of FGC, as well as the context, current and potential scope of application of FGC as a child justice intervention in South Africa.

The next chapter opens with a literature review, wherein the researcher focuses on the historical development of child justice in South Africa, which ultimately led to the enactment of the CJA and its focus on restorative justice and Ubuntu as cornerstones of alternative approaches to justice.

CHAPTER 2

AN OVERVIEW OF CHILD JUSTICE IN SOUTH AFRICA

*“Africa is renowned for its beauty, its natural heritage and prolific resources –
but equally, the image of its suffering children haunts the conscience
of our Continent and the world”*
(Nelson Mandela, 1996).

2.1 INTRODUCTION

Chapter 2 opens with a comparison of retributive and restorative justice approaches in order to provide context and understanding for the history of child justice in South Africa up until the enactment of the CJA. As FGC is a restorative justice intervention, a discussion of the underpinnings of restorative justice, and its links with Afrocentric justice systems will be provided. Chapter 2 aims to provide an understanding of the events in South Africa that led to the inclusion of restorative justice in the CJA, in an attempt to fully grasp the necessity of exploring the scope of FGC as a child justice intervention in South Africa.

Traditional African justice cherished Ubuntu, and focused on restoring harmony, peace, relationships, and community status quo. It is trite that colonisation replaced this African approach to justice with a Westernised approach which is individualistic, at times harsh, and often contradictory to the African way (Kilekamajenga, 2018:152-153; Gxubane, 2012:108; Schoeman, 2013:297-299; Songca, 2018:83). The rights of children with regards to justice within this system were rarely considered, and often abused (Maguire, 2012:75). However, with the end of apartheid came hope - not only for a democratic and equal society - but also for the rights of children (Maguire, 2012:77; Swanzen & Harris, 2012:5; Tshem, 2009:15-17). The CJA was enacted and with it a new approach that looked towards upholding the rights of children and embracing a restorative and Afrocentric style of justice. A specific restorative justice intervention provided for by the CJA in this regard is FGC which is entrenched in section 61 of the Act.

2.2 DIFFERENTIATING BETWEEN RETRIBUTIVE AND RESTORATIVE JUSTICE

To provide context to the history of child justice in South Africa, it is important to have a basic understanding of the two main justice approaches prevalent in South Africa's justice system, and how they differ. Prior to colonisation, South African justice was implemented according to traditional indigenous approaches. Traditional justice embraced the concept of Ubuntu and saw crime as a conflict between people that destroyed relationships. Justice was thus aimed at healing and restoring relationships (Schoeman, 2013:299-300; Songca, 2018:83-89). Similarities however exist between the traditional justice approach and restorative justice approach (Kilekamajenga, 2018:13; Songca, 2018:89). Colonisation, however, brought with it retributive justice – a Western style focused on legality and punishment which is still prevalent in most contemporary criminal justice systems (Armstrong, 2012:364; Schoeman, 2014:np; Snyman, 2008:11-15).

Restorative justice sees crime as a conflict between individuals which harms people and relationships. The purpose of restorative justice is to address these harms and repair them, re-establish dignity and reconcile parties harmed or involved in the offence by including them in the justice process (Anderson, 2017:166; Schoeman, 2014:np; Wilson et al., 2017:4; Zehr, 1990:181, Zehr & Gohar, 2002:82). As Braithwaite (2000:14) put it “...*restorative justice means restoring victims, restoring offenders and restoring communities.*” In contrast, the retributive approach views crime as a violation of state and a disruption of legal balance (Snyman, 2008:11-15). To restore this balance, offenders must be punished in proportion to the offence committed (Armstrong, 2012:364). Justice is associated with legal processes and crimes are punished according to the prevailing legal system (Schoeman, 2016:33-34).

The following table provides a comparison of the retributive and restorative approaches:

TABLE 1:**DIFFERENTIATION BETWEEN RETRIBUTIVE AND RESTORATIVE JUSTICE**

ORIGIN	
RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
Western colonisers replaced traditional justice with the retributive approach, which is still prevalent in South Africa today (Schoeman, 2014:np). It is rooted in religious beliefs whereby 'sin' must be punished (Gxubane, 2012:103). The state has owned the responsibility to prosecute crime since the 13 th century, thus, the classical justice system formed (Anderson, 2017:163). Retributive justice is a Western approach influenced by Roman-Dutch and English law with criminal procedures founded on classical and neo classical theories from the 18 th and 19 th centuries. These include due process, deterrence, just deserts and judicial discretion (Brown, Esbensen & Geis, 2013:158-166; Burke, 2014:np; Geldenhuys, Joubert, Swanepoel, Terblanche, van der Merwe & Luris; 2011:316-317; Reid, 2015:52).	Credit is given to Albert Eglash for use of the term 'restorative justice' in articles published in 1977 (Gxubane, 2012:104). Restorative principles, including Ubuntu, are embodied in many indigenous cultures, but it only emerged in the Western world in the 1970s. Retributive justice was failing to meet certain needs, for example crime prevention, victim and community inclusion, offender rehabilitation and so forth, thus restorative justice gained importance in practice and policy in the 1990s (Buth & Cohn, 2017:3; Gxubane, 2012: 102; Weitekamp, 2010:780; Zehr & Gohar, 2002:11). The start of the new democracy saw restorative justice gain ground in South Africa (Swanzen & Harris, 2012:5). Of specific importance is its incorporation in the CJA (Schoeman, 2014:np).
DEFINITION OF CRIME	
RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
Retributive theory sees crime as a delinquent act in violation of the state that destroys the equal balance between victims and offenders (Armstrong,	Restorative justice sees crime as a social problem with specific social causes and solutions. It is a conflict and violation of people and relationships which causes them

2012:364; Schoeman, 2014:np). Punishment restores balance, respects individuals as morally independent and is 'just deserts' i.e. proportionate to the seriousness of the crime and what the offender deserves (Armstrong, 2012:364).	harm (Schoeman, 2014:np; Zehr, 1990:184). Justice should reconcile parties, address the harm caused and should include the offender, victim, and community in the justice process (Anderson, 2017:166; Schoeman, 2014:np; Zehr & Gohar, 2002:82).
PRIMARY AIM	
RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
Retributive justice aims to ensure legal balance is maintained. Legal balance is maintained by members of society exchanging observance of the law for protection of their rights by that law. When an individual disobeys the law, they infringe on the rights of another individual and gain an unfair advantage. This causes a legal imbalance. To restore balance, the offender must be punished in proportion to the offence committed. In this way the offender repays his debt to society and the state and is able to re-join the community (Snyman, 2008:11-15). Prevention and denunciation of crime is also sought as punishment aims to deter offenders from crime (Anderson, 2017:162).	Restorative justice aims to provide healing and restore the well-being and relationships of the offender, victim, and community (Gxubane, 2012:108-109; Schoeman, 2014: np; Zehr & Gohar, 2002:82). Zehr and Gohar (2002:40) list the following as its goals: to put key decisions into the hands of those most affected by the offence; to create a more healing and transformative justice approach; and to reduce future offending. Other authors add crime prevention, offender accountability, victim empowerment, reintegration of offenders into society, and reduced recidivism as aims (Gxubane, 2012:109; Nilson, 2012:16; Schoeman, 2014:np; cf. Zehr, 1990:122).
OFFENDER INVOLVEMENT	
RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE

Retributive justice puts the responsibility for key decisions and actions into the hands of criminal justice professionals. The offender remains passive but has the constitutional right to testify (Department of Justice and Constitutional Development, 2011:4; Geldenhuys et al., 2011:297). The victim and offender are adversaries (Department of Justice and Constitutional Development, 2011:4). Offenders are not required to own responsibility but rather distance themselves from the harm they have caused the victim (Zehr & Gohar, 2002:13-16). If convicted they are passively punished in the form of a sentence (Anderson, 2017:167).	Restorative justice includes and actively involves offenders in the justice and decision-making process (Anderson, 2017:167; Department of Justice and Constitutional Development, 2011:4). They are held accountable and encouraged to face the victim and the harm they have caused (Carroll, 2016:130-131; Zehr, 1990:188). Offenders are allowed the chance to talk about their hurt, to explain how and why the crime happened, to have their needs recognised and met, and to be a part of resolving the conflict by forming a restitution agreement (Anderson, 2017:167; Dzur, 2017:485; Zehr, 1990:200).
VICTIM INVOLVEMENT	
RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
Retributive justice does not allow for much victim participation (Schoeman, 2014:np). Victims are represented by the state and generally only involved as a witness (Anderson, 2017:167; Gxubane, 2012:108). The offence is against the state, which takes on the 'victim' role (Zehr, 1990:81). The victim and offender are positioned as adversaries who remain passive whilst criminal justice professionals perform duties and make key decisions for them (Department of Justice and Constitutional Development, 2011:4).	Restorative justice is victim centred and includes victims in the justice process, decision making, and reintegration of the offender back into society (Department of Justice and Constitutional Development, 2011: 4; Schoeman, 2014:np). Victims have decisive input in their case and its outcome and are a central part of the process. They are empowered through being heard, having their needs met and being involved in decision making (Anderson, 2017:167; Gxubane, 2012:108-109; Schoeman, 2014:np).
COMMUNITY INVOLVEMENT	

RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
<p>Retributive justice grants the state the responsibility of representing the victim and community (Gxubane, 2012:109). The community is only involved in the criminal justice system through reporting crime, identifying offenders, and testifying in court (Masiloane & Marais, 2009:391).</p>	<p>The community is encouraged to support, participate and own the restorative justice process (Schoeman, 2014: np). It is seen as necessary in providing support to victims and offenders and in assisting and ensuring the reintegration of offenders (Gxubane, 2012:109; Masiloane & Marais, 2009:391).</p>
PROCESSES AND OUTCOMES	
RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
<p>Legal processes are used to determine sentences which are handed down according to the prevailing legal system (Schoeman, 2016:33-34). Sentences are punishments given by the court in the form of imprisonment, fines, correctional supervision, and commitment to a treatment centre (Geldenhuys et al., 2011:317-339). Punishment must be 'just deserts,' i.e. in proportion to the seriousness of the offence (Armstrong, 2012: 364). The main purposes of sentencing in South Africa are retribution, deterrence, prevention, and rehabilitation (Geldenhuys et al., 2011:317-339). Punishment expresses society's condemnation of crime, ensures offenders are held responsible, upholds the dignity of individuals, and treats them as morally independent (Armstrong, 2012:364; Snyman 2008:11-15).</p>	<p>Restorative justice makes use of interventions such as VOM, FGC and circle sentencing (Schoeman, 2014: np; Wilson, et al., 2017:4). These bring affected parties (victim, offender, community) together to have an open, equal, and flowing dialogue regarding the effect of the offence. A restitution agreement is created to provide restitution to the victim and to aid in offender reintegration (Kuo et al., 2010:319; Schoeman, 2014:np). Diverse options are available for inclusion in these agreements. The following are listed in section 53(3) of the CJA: written or oral apology, formal cautioning, supervision, compulsory school attendance orders, vocational, educational or therapeutic services, community service, service to the victim, and so forth.</p>

In summary, the retributive approach is a Western style of justice focused on legal rules, deterrence, just deserts punishment, and ensuring legal balance is maintained. Control is in the hands of criminal justice officials and processes are determined by legislation. In comparison, restorative justice is more akin to traditional justice systems with focus placed on restoring relationships that were broken as a result of the criminal act, whilst still ensuring accountability. Control is placed in the hands of the victim, offender and community and processes are flexible, supportive, and inclusive.

South African criminal justice follows a predominantly retributive approach. However, the CJA is *sui generis* because it was ground-breaking in and embraced a restorative approach. The following discussion focusses on the history of child justice in South Africa up to the introduction of the CJA. With this the researcher aims to provide an understanding of why restorative justice is important with regards to contemporary South African child justice.

2.3 HISTORY OF CHILD JUSTICE IN SOUTH AFRICA

As previously mentioned, Western justice replaced traditional African justice which was restorative in nature, with a retributive system of procedures and rules (Kilekamajenga, 2018:13-19; Schoeman, 2013:299-300; Songca, 2018:83). Western justice differs significantly from the African traditional approach; while Western justice focuses on offences punishable by the state, African traditional justice aims to restore relationships and re-balance relationships affected by the offence (Songca, 2018:83).

The implementation of the Western approach distorted the traditional African justice system and led to a breakdown of traditional social structures and social bonds between individuals and their community; a fragmented social identity, and the disintegration of traditional communities and value systems. Africa was left in a state of anomie - a sense of normlessness and chaos (Schoeman, 2013:297-299; Songca, 2018:8). Anomie commonly occurs when highly developed societies encounter and conflict with traditional social structures, such as is the case with the colonisation and globalisation of Africa. Anomie can trigger cultural conflict. In this case, traditional African social structures, including those used for conflict resolution, were destroyed. Although the social change that anomie brought was, in a sense, positive, it also

caused cultural conflict evident in the culture of violence, high crime rates, and racial intolerance prevalent in Africa (Schoeman, 2013:297-299).

The culture of violence continued and was exacerbated during apartheid (Els, 2012:40-48). South Africa voted in support for the Declaration of the Rights of the Child in 1924, signed the Geneva Convention and seemed to play a significant role in international efforts to advance the rights of children. However, apartheid impeded advocacy and participation in the child rights movement globally prevalent at the time (Songca, 2018:78-79). Youths, especially black youths, were either victims or perpetrators of crime and violence, and violence was condoned and embraced as a weapon in the war against apartheid. Apartheid conditions, such as racial segregation, the migrant labour force, and globalisation caused extensive damage to families. This resulted in a vulnerable South Africa characterised by weak and separated family structures, a lack of educated citizens, unemployment, poverty, marginalisation, disempowerment, extensive community conflict and an increase in crime rates (Els, 2012:40-48; Songca, 2018:86).

Furthermore, with the apartheid regime came a harsh retributive child justice system in South Africa (Maguire, 2012:75). Child offenders, especially black and coloured children, were subjected to brutal, harsh, and inhumane treatment, corporal punishment such as caning and whipping, and mass incarceration (Maguire, 2012:76; Songca, 2018:80; Steyn, 2010:1-2). Oftentimes child offenders found themselves victimised, assaulted or even killed at the hands of criminal justice officials (Maguire, 2012:76; Songca, 2018:80). There was no system specially to deal with children in conflict with the law and many were detained without trial in horrendous prison conditions, often without the knowledge of their parents (Songca, 2018:80; Steyn, 2010:1-2).

In the years prior to the end of apartheid, attempts were made to deal with child offenders away from the justice system of that time and many called for change. During the 1980s, concerned practitioners in the Western Cape informally implemented FGC by mediating cases involving child offenders rather than allowing them to receive corporal punishment (Steyn, 2010:102-103). The early 1990s saw a call for a justice system that was better suited to deal with child offenders and around this time

programmes by the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) and other diversion programmes began to be implemented to avoid the incarceration of child offenders (NICRO, 2016a:np; Steyn, 2010:1-2).

NICRO were the first non-state entity to offer diversion programmes in South Africa during this time. Their first programmes were the Youth Empowerment Scheme (YES) and Pre-trial Community Services, later expanded to include FGC, VOM, and Journey. These diversion programmes were practised but unregulated, and only implemented based on prosecutorial discretion to withdraw criminal charges. Thus, implementation was unequal and, due to a lack of law and guidelines, a challenging endeavour (Steyn, 2010:1-2; Tshem, 2009:43-44).

The end of apartheid saw many changes with regards to child justice (Maguire, 2012:77). With the dawn of the new democracy, newly elected president Nelson Mandela promised that the issue of child detention would be addressed with urgency (Tshem, 2009:15-17). Corporal punishment was outlawed, and the use of intentional race-based punishment was prohibited (Maguire, 2012:77). It was also around this time that restorative justice began gaining momentum in South Africa, in response to the perceived failures of retributive justice (Swanzen & Harris, 2012:5).

Retributive justice began facing criticism due to its inability to prevent crime and rehabilitate offenders (Buth & Cohn, 2017:3; Weitekamp, 2010:780; Zehr & Gohar, 2002:11). Legality is often too restrictive of who can partake in justice. Crime is the state's responsibility, and it therefore represents the victim and community (Gxubane, 2012:109). As a result, victims may end up feeling ignored, neglected, and often re-victimised and abused by the state. Furthermore, victims are often unaware of the conclusion of cases or whether or not offenders are reformed. Thus, their need for information, truth-telling, empowerment, and restitution is neglected. Offenders are not held accountable, encouraged to personally transform, or aided in reintegration. Rather, self-care is encouraged, and accountability rejected. The need for communities to ensure the welfare of all members, inclusive of victims and offenders, as well as to be involved in and assured of crime prevention is also denied (Zehr, 1990:30-34; Zehr & Gohar, 2002:13-16). Its natural conflict resolution abilities and sense of community is neglected (Gxubane, 2012:109; Weitekamp, 2010:779).

The above lacunae, along with the child rights violations predominant within the justice system, such as unlawful arrest and detention, was front and centre politically with advocates fighting for fair treatment of children. The political climate of the time called for reconciliation. All these factors made restorative justice an attractive option for implementation within the child justice sector (Swanzen & Harris, 2012:5).

South Africa ratified the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which stated that children must be diverted away from the criminal justice system and into a suitable programme as early as possible (Gxubane, 2018:3). On 16 June 1995, South Africa also ratified the UNCRC. This is the key international instrument dealing with the rights of children in conflict with the law. Its leading principles include non-discrimination, the best interests of the child, respect for views of the child, and the child's right to life and survival. Restorative justice is also recommended (Gxubane, 2018:3; Lynch, 2010:166-167; Songca, 2018:78). Ratification obligated South Africa to establish domestic laws for children in conflict with the law that upheld their rights and included diversion options (Tshem, 2009:15-17).

The African Charter on Rights and Welfare of the Child (ACRWC), which aims to protect the rights of African children, was ratified on 7 January 2000. The ACRWC was unique in its creation of rights that take into consideration the specific social, economic, cultural, traditional, and developmental circumstances and environments of African children. It also places emphasis on rehabilitating, reforming, and reintegrating children back into their families – which is central to African and restorative justice (Gxubane, 2018:3; Songca, 2018: 79-81). The 1996 Constitution also afforded specific rights to children (Tshem, 2009:15-17) with section 28(2) highlighting what is referenced as the 'best interests' principle' - that the best interests of a child are of paramount importance in all matters concerning a child.

A Juvenile Justice Project Committee was established to draft child justice legislation. This was influenced by a number of documents, including the National Crime Prevention Strategy, Social Welfare White Paper 1997, White Paper for Safety and Security, Correctional Services and Social Development Plans, South African Law Commission papers on sentencing and juvenile justice, the African Charter on Rights

and Welfare of the Child, and the African Charter on People and Human rights (Steyn, 2010:1-2; Tshem, 2009:15-17). The White Paper for Social Welfare and the Inter-Ministerial Committee on Youth at Risk, both proposed the use of restorative justice principles for dealing with child offenders in South Africa (Gxubane, 2012:100). The Inter-Ministerial Committees on Youth at Risk submitted policy recommendations that included the use of FGC (Tshem, 2009:15-17).

An investigation into child justice was launched by the Juvenile Justice Project Committee of the South African Law Reform Commission in 1997, whereby key role-players in the criminal justice system and children were consulted. This produced a discussion bill and draft bill, and a final report submitted to the Minister of Justice in 2000. In 2001 Cabinet allowed it to be presented in Parliament, which happened in 2002 – and which resulted in the Child Justice Bill 49 of 2002. Delays, and revisions hindered its enactment, however, in late 2008 the Child Justice Act 75 of 2008 was approved. In order to allow role-players time to prepare, the CJA only officially took effect on 1 April 2010 (Songca, 2018:85; Steyn, 2010:1-2).

As an extension of the South African Constitution, the CJA is grounded on the best interests principle and considers it central to creating and maintaining a criminal justice system that is child centred, and able to ensure that the rights of children are upheld (Schoeman & Thobane, 2015:35; Songca, 2018:86). Children's rights are met, respected, and upheld in a number of ways such as through the use of a separate justice system, by placing emphasis on the importance of age when dealing with young offenders, and by implementing diversion and restorative justice (Maguire, 2012:73-77; Schoeman, 2014:np; Songca, 2018:85; Steyn, 2012:76).

Restorative justice was found to be a more suitable option for dealing with children in conflict with the law, as opposed to retributive justice (Schoeman, 2014:np). Along with the principles of Ubuntu, restorative justice is embraced throughout the CJA (Sauls, 2016:4; Songca, 2018:85-86; Steyn, 2012:76). The CJA states the following as one of its aims:

“to ... expand and entrench the principles of restorative justice in the criminal justice system for children who are in conflict with the law, while ensuring their responsibility and accountability for crimes committed.”

Section 2(b)(iii-iv) further provides that an objective of the CJA is to promote the spirit of Ubuntu in the child justice system by supporting reconciliation using restorative justice responses and including parents, family, victims and community members affected by the offence to encourage reintegration of the child.

Restorative justice and Ubuntu will be further discussed below.

2.4 AN AFROCENTRIC AND RESTORATIVE APPROACH TO CHILD JUSTICE

As previously highlighted, Ubuntu and restorative justice are both embraced throughout the CJA. They are applicable across the Act with restorative justice being relevant to all sectors pertaining to reactive child justice responses including the police, courts, judiciary, and corrections (Schoeman, 2014:np; Steyn, 2012:76). Restorative justice also aims for crime prevention and in this regard can be implemented as a proactive conflict resolution intervention in schools, corporate environments, family mediations and so forth (Batley & Skelton, 2019:3; Schoeman, 2014:np; Steyn, 2012:76). The reactive application of restorative justice falls within the scope of this study, specifically that of FGC, a restorative justice intervention entrenched in section 61 of the CJA. A discussion on the concept of restorative justice as well as its link to Ubuntu is necessary to fully comprehend FGC as an appropriate intervention strategy.

Crime violates people and harms victims, communities, and interpersonal relationships (Wilson et al., 2017:4; Zehr, 1990:181; Zehr & Gohar, 2002:82). Victims are not only those directly involved in the crime but are also family members of victims and offenders, witnesses to the crime, and the affected community (Zehr & Gohar, 2002:82). Restorative justice is a process that collectively involves those who have a stake in a specific offense in addressing the harms, needs and obligations that have arisen as a result of the offence. This allows for healing and things to be 'put right' or resolved (Anderson, 2017:167; Fraser, 2017:161; Zehr, 1990:186; Zehr & Gohar, 2002:82).

Restorative justice views crime not only as a delinquent act, but also as a social problem with specific social causes and solutions; and as a conflict and violation between individuals which harms people and relationships (Wilson et al., 2017:4; Schoeman, 2014:np). Crime violates relationships in more than just the destruction of the relationship between the offender and victim. It also destroys trust, results in feelings of suspicion, estrangement, and discrimination, and creates boundaries between family, friends, and community (Zehr, 1990:181-182).

Crime damages relationships, and damaged relationships are a cause and effect of crime (Zehr & Gohar, 2002:17-18). If one member of a family commits a crime, the family as a whole is affected (Schoeman, 2012:82-83; Songca, 2018:87-89). Zehr (1990:182) states that “*crime grows out of injury*” meaning that when injured through crime, a person may commit crime, i.e. the abused becomes the abuser. It is thus important that all involved are provided with healing, including the offender, the victim, the family, and the community (Zehr, 1990:182-186; Zehr & Gohar, 2002:17-18). Justice should address the harm and heal, reconcile, and restore the well-being, dignity and relationships of the victim, community, family, and the offender whilst including them in the process. It should further address victim needs, encourage offender accountability, involve victims, offenders, and the community impacted by the crime in justice processes, and attempt to prevent re-offending (Anderson, 2017:166; Fraser, 2017:162; Schoeman, 2014: np; Zehr, 1990:182-186; cf. Zehr & Gohar, 2002).

Zehr (1990:211) - referred to as the grandfather of restorative justice - (Kilekamajenga, 2018:31), summarises that restorative justice view crime as a violation of people and relationships and sees the aim of justice as identifying needs and obligations in order to put things right. He continues that justice encourages dialogue and mutual agreement and gives the victim and offender central roles in the justice process. Lastly, Zehr (1990:211) states that justice is judged based on the extent that it is able to meet needs, provide healing to relationships and individuals and ensure that responsibility is assumed.

In achieving this, restorative justice takes the issue out of the hands of the court, with the role of justice officials changing to that of facilitators, and places it into the hands of the people involved by including the offender, the victim, and the community as role-

players in the justice process (Anderson, 2017:166; Dzur, 2017:485; Schoeman, 2014:np). Focus is placed on the harm caused by crime rather than the law that has been broken and equal concern is shown for the offender, victim, and community. All three are involved in the justice process in an attempt to empower and meet their needs (Anderson, 2017:166; Zehr & Gohar, 2002:43-44).

Respectful dialogue is key to restorative justice (Braithwaite, 2000:14; Zehr & Gohar, 2002:43-44). Restorative interventions function according to the belief that the most beneficial thing to do for all parties involved in a crime is to bring them together so that an open, equal, and flowing dialogue can be undertaken regarding the effect of the offence on their lives and what agreement can be reached to provide restitution to the victim (Kuo et al., 2010:319). Zehr and Gohar (2002:38) state that restorative justice values interconnectedness but its core value is respect. Interventions must be respectful, impartial, fair, voluntary, and flexible to specific participant needs and cultures (Kuo et al., 2010:319). All parties are given the chance to talk about their hurt, to ask questions of each other, to understand how and why the crime happened, to have their needs recognised and met, and to be a part of the solution and solve the conflict by negotiating and forming an agreement (Dzur, 2017:485; Zehr & Gohar, 2002:25).

Parties involved in restorative justice interventions often find healing through forgiveness and reconciliation which results in empowerment (Gxubane, 2012:109). Parties are able to make amends, show remorse, apologise, and practice forgiveness (Braithwaite, 2000:14). Restorative justice does not, however, enforce victim forgiveness or reconciliation with the offender. Rather the environment is conducive to this, and it does commonly occur, but is entirely up to the participants (Zehr, 1990:186; Zehr & Gohar, 2002:6-10). Furthermore, recidivism is prevented. Although restorative justice is not specifically aimed at reducing recidivism, research suggests that it does have a positive effect in this regard (Zehr & Gohar, 2002:6-10) and, further that offenders are aided in their reintegration back into the community (Anderson, 2017:166; Schoeman, 2014:np).

Victims are of specific concern in restorative justice interventions where their need for information (why did the crime happen), truth-telling (to tell their story), empowerment

(returned control) and restitution (vindication) are met (Zehr & Gohar, 2002:12; Zehr, 1990:191-196). Restorative justice provides victims with the chance to be heard, to have their needs met, and to be central to the justice process, as opposed to merely fulfilling the duties of a witness (Anderson, 2017:167; Gxubane, 2012:108-109; Schoeman, 2014:np). The power that was taken away from them by the offender is not further denied by court control. Rather restorative justice empowers victims by giving them a voice, the opportunity to negotiate their needs with the offender, and an opportunity to provide decisive input in the case (Anderson, 2017:166; Gxubane, 2012:108-109; Zehr, 1990:194). This aids victims with the healing process and can also decrease victimisation (Carroll, 2016:128-129).

Offenders are denied the chance to distance themselves from the victim but are rather held accountable and encouraged to grasp and acknowledge the harm they have caused and acknowledge the consequences that the victim faced due to the offence (Carroll, 2016:130-131; Zehr, 1990:197). In addition, encouragement and support is given to offenders so that they may accept that they have caused harm and make reparation in an environment that is non-judgemental and respecting of the worth and dignity of the offender (Schoeman, 2014:np; Zehr & Gohar, 2002:43-44). Offenders become more than just receivers of punishment. They are still held accountable but can also be actively involved in resolving the issue and have their own needs and issues creatively dealt with in the best possible manner (Anderson, 2017:167; Ikpe & Coker, 2010:226-227; Zehr, 1990:200; Zehr & Gohar, 2002:43-44). Further, an effort is made to prevent re-offending and encourage and assist reintegration back into the community (Schoeman, 2014:np).

Restorative justice is also aware that the community is more affected by crime than justice officials often acknowledge and also require healing (Kilekamajenga, 2018:44-45; Zehr, 1990:188). The community is important because crime disrupts community life and therefore should be handled in a manner that involves community (Fraser, 2017:163; Zehr & Gohar, 2002:43-44). The community is more likely to know the cause of the crime, to find a solution to the crime and to reintegrate the offender. They are better equipped to understand what is happening with regards to both the offender and the victim as they come from the same environment (Kilekamajenga, 2018:44-45).

In addition, offenders are from the community and will return to the community at the conclusion of their sentence (Murhula et al., 2019:29). Thus, restorative justice aims to restore a sense of community and encourages the community to participate, to own the justice process, and to take responsibility for all its members, including offenders, in order to create and maintain social cohesion (Braithwaite, 2002:569; Schoeman, 2014:np). Community involvement is of importance in the criminal justice system not only with regards to reporting, identifying, and testifying, but also in assisting with the reintegration of offenders back into the community (Masiloane & Marais, 2009:391; Murhula et al., 2019:29).

Involving the community restores ownership of the conflict, rather than professionals, thus empowering them to deal with conflict as well as equipping the community to reintegrate offenders. Community involvement in justice is of key importance with regards to reintegration, rehabilitation, and accountability (Kilekamajenga, 2018:44-45). Community based restorative justice could also potentially bridge the gap between the state and the community and in turn empower communities and increase respect and tolerance for the law (Hargovan, 2009:64). Ikpe and Coker (2010:226-227) note further that community involvement could possibly reduce societal violence and trauma.

When questioning who or what 'the community' is with regards to restorative justice, two approaches are relevant. The first, referred to as 'community of care', includes those who have a relationship with the victim or offender (i.e. through friendship, familial ties, or other ties i.e. as a teacher, coach, neighbour etc.) and thus offer them support and take part in interventions such as FGC. Restorative justice practice seems to focus more on this aspect of community (Kilekamajenga, 2018:46-47; Willis, 2016:170-171; Zehr, 2002:26). The second approach, 'community of place,' refers to community volunteer representatives within the same geographical location of the offender or victim (Kilekamajenga, 2018:46-47; Willis, 2016:171-175). These volunteers are generally unknown to offenders and take part in restorative justice interventions in several ways such as playing the role of a victim, facilitating an intervention, or assisting in reintegration (Willis, 2016:171-175). Community of place involvement in initiatives allows community to understand crime, victims, offenders, and justice. This impacts the offender's acknowledgment of the effect of the crime on

the larger community, as well as their participation in community service (Umbreit, Coates & Vos, 2007:28).

The inclusion of the community is also important in African tradition and Ubuntu philosophy. Section 2(b)(iii) of the CJA lists that one of the objects of the CJA is to “...*promote the spirit of ubuntu in the child justice system.*” It continues to provide that this will be achieved through:

- “(i) fostering children’s sense of dignity and worth;
- (ii) reinforcing children’s respect for human rights and the fundamental freedoms of others by holding children accountable for their actions and safe-guarding the interests of victims and the community;
- (iii) supporting reconciliation by means of a restorative justice response; and
- (iv) involving parents, families, victims and, where appropriate, other members of the community affected by the crime in procedures in terms of this Act in order to encourage the reintegration of children;”

Thus, a link is established between Ubuntu and restorative justice. Restorative justice has been praised for its indigenous roots in countries such as Australia, New Zealand, South Africa, and North America (Gxubane, 2012:108; Weitekamp, 2010:782). It’s equivalent to the Hebrew word ‘*shalom*,’ the Maori ‘*whakappa*’, and the Navajo ‘*hozho*’ (Kilekamajenga, 2018:115; Zehr & Gohar, 2002:17-18). Restorative justice in South Africa is rooted in the philosophy of Ubuntu and complementary to the traditional African justice system (Kilekamajenga, 2018:115; Murhula et al., 2019:31; Reyneke & Reyneke, 2010:360-361; Songca, 2018:89; Zehr & Gohar, 2002:17-18). The word ‘Ubuntu’ originates from the Nguni and Bantu language family (Ndebele, Swati/Swasi, Xhosa and Zulu) (Kilekamajenga, 2018:159; Mugumbate & Nyanguru, 2013:85). The philosophy is represented in other ethnic groups under different words such as the Eastern African Bantu speaking peoples ‘*mundu/muntu*’ or ‘*utu*’, the Swahili ‘*mtu*’, or the Tswana ‘*botho*’ (Kilekamajenga, 2018:116; Schoeman, 2013:293).

A number of authors link the principles of Ubuntu and restorative justice (Murhula et al., 2019:31; Kilekamajenga, 2018:13; Songca, 2018:89-92). According to Kilekamajenga (2018:13-19) when compared to African traditional methods of justice,

restorative justice is not a new idea but rather reflective of the African approaches. It can even be said that the restorative way is the African way of doing justice as the values and procedures of restorative justice mirror those of traditional justice. Both restorative justice and Ubuntu acknowledge the interconnectedness of individuals and community and are interactive and democratic, as will be discussed in Chapter 4 (Gxubane, 2012:101; Kilekamajenga, 2018:31-32; Murhula et al., 2019:31; Schoeman, 2013:301-302; Songca, 2018:92; Zehr & Gohar, 2002:17-18).

Both restorative justice and Ubuntu promote the use of dialogue in resolving conflict (Kilekamajenga, 2018:31-32; Schoeman, 2013:301-302; Songca, 2018:92). Three main practices which include dialogue are associated with restorative justice: mediation, conferencing, and sentencing circles (Schoeman, 2014:np; Wilson et al., 2017:4). The CJA allows for the use of FGC, VOM, or any other restorative justice option as a sentencing option in section 73(1) or diversion option in section 53(7).

FGC is a restorative justice intervention with Ubuntu characteristics which ensures its Afrocentricity (Steyn, 2010:109). Its process is one of dialogue whereby victims, offenders, and their support group (i.e. family, friends etc.) come together and discuss the effects of the crime, as well as collectively produce an agreement for reconciliation, restitution and restoration (Gxubane, 2016:1; Schoeman, 2014:np; Zehr & Gohar, 2002:43-44). Aligned with the nature of restorative justice and Ubuntu, FGC as a restorative justice intervention provides for dialogue between parties affected by the offence, meets the needs of victims, and is collectivistic and communitarian (Sloth-Nielsen & Gallinetti, 2011:79; Steyn, 2010:109). In Chapter three the researcher provides an in-depth discussion of FGC.

2.5 CONCLUSION

As FGC is a restorative justice intervention, it was necessary to consider where it fits in as well as how it came to be included in the CJA. In an attempt to provide the context in which restorative justice - as opposed to retributive justice - became entrenched in the CJA, a comparison of the two forms of justice was provided as well as the history of child justice in South Africa. Globalisation and apartheid provided a breeding ground for violence which was furthered by the harsh retributive nature of the previous child

justice system, which infringed on the rights of children. The CJA brought with it a much needed more Afrocentric and child-centred approach with its inclusion of Ubuntu and restorative justice.

One specific restorative justice approach provided for by the CJA is FGC. It is this intervention that is of specific relevance to this research. Chapter 3 fully explores the process and purpose of FGC based on legislation and literature. Following on from this the researcher then presents research conducted on FGCs as well as its current application as a child justice intervention in South Africa, which provides context for the aim of this research.

CHAPTER 3

FAMILY GROUP CONFERENCING

“If one part suffers, every part suffers with it; if one part is honoured, every part rejoices with it”

(1 Corinthians 12:26).

3.1 INTRODUCTION

In Chapter 3 the researcher provides an in-depth exploration of FGC and therein provides an explanation of the purpose and process of FGC, a revision of where FGC fits into the CJA, and a discussion of how it differs from VOM. The examination is based on international and national research, but also focusses on the current application of FGC in South Africa. This provides context for the aim of this research – to consider the application of FGC as a child justice intervention in South Africa.

The New Zealand Youth Justice System, with FGC at its core, is often considered to be the best youth justice model globally, and has been used as an example worldwide (Dzur, 2017:485; Fraser, 2017:158; Gxubane, 2016:4-5). FGC originated in Aotearoa, New Zealand in 1989 and stems from a Maori practice applied to all offences committed by children, excluding murder and manslaughter (Connolly, 2010:374; Naylor, 2010:665-666).

Globally many other countries have adopted FGC, including the United States of America, Canada, Europe, and South Africa (Bradshaw & Roseborough, 2005:21; Connolly, 2010:374; Naylor, 2010:665-666; Zehr & Gohar, 2002:52). FGC closely resembles many traditional justice practices such as those of the Aborigines, Maoris, Innuits and Native Indians (Kilekamajenga, 2018:115; Weitekamp, 2010:782). In Africa, as mentioned previously, it mirrors several characteristics of Ubuntu, and resembles traditional African justice practices such as *Lekhotla* (Gxubane, 2012:108).

3.2 THE PURPOSE AND PROCESS OF FAMILY GROUP CONFERENCING

As mentioned in Chapter 2, restorative justice views crime as harmful to relationships (Murhula et al., 2019:30; Schoeman, 2014:np; Zehr, 1990:181). As a restorative based intervention, FGC aims to bring healing of the harm caused whilst still holding the offender accountable. It finds purpose in providing reconciliation, restitution, healing, restoration and closure for all parties involved (Els, 2012:74; Gxubane, 2016:1; Holler, 2015:116; Murhula et al., 2019:30; Schoeman, 2014:np; Steyn, 2010:109; Zehr & Gohar, 2002:43-44). To achieve this, FGC brings the offender, victim, their families, and other requested persons (friends, teachers, coaches, pastors and so forth) together to deal with the offence through dialogue (Gxubane, 2016:1; Schoeman, 2014:np; Umbreit et al., 2007:33).

FGC has the potential to be beneficial to victims, offenders, and the community (Anderson, 2017:169). FGC changes the ethic - it is no longer about punishment but rather about engaging in conversation around the crime in an attempt to gain understanding and find a suitable solution (Dzur, 2017:495-496). Avoiding the formal justice system is beneficial to the victim as having the offender accept responsibility offers them vindication and validation; the offender answers to the victim rather than the state and spares the victim the trauma and time of going on trial (Anderson, 2017:169). Victims are also provided the chance to voice their needs and experiences, gain compensation, apology and clarity, and have direct input and decision-making in their case, which in turn provides an opportunity for closure and healing (Department of Justice and Constitutional Development, 2011:4; Steyn, 2010:115-117).

Family is directly or indirectly involved when one of its members commits a crime because offending tears families apart and thus family owns the responsibility for finding a solution (Dzur, 2017:495-496). Research suggests that familial and parental involvement has a positive influence on the rehabilitation of child offenders. It assists in ensuring accountability, leads to lower behavioural issues, reduces recidivism, provides youth with much needed emotional support and belonging, and aids in community reintegration (Walker et al., 2015:413). The harm suffered by the community is also addressed through community participation (Schoeman, 2014:np).

Victim and community inclusion aids in dissolving dissatisfaction with the justice system as victims are provided compensation, and vigilantism is thus discouraged (Connolly, 2010:376; Tshem, 2009:67).

Children who come into conflict with the law are kept away from the criminal justice system and possible incarceration in so far as possible and thus avoid the negative effects of acquiring a criminal record. FGC helps youths to see that they are part of a community and that their actions affect the entire community (Holler, 2015:122). Furthermore, they are provided with life-skills and taught accountability, and are dealt with in a creative manner that responds to their developmental needs and assists them in changing their behaviour whilst still holding them accountable (Anderson, 2017:169-170; Connolly, 2010:376; Steyn, 2010:112; Tshem, 2009:50-51).

An FGC may only be implemented if the offender accepts accountability for the offence (Naylor, 2010:665-666). Accountability is achieved in numerous ways throughout the process of an FGC. Admitting an offence has been committed, owning responsibility for that offence, and agreeing to sit down to discuss the offence with the victim and support persons begins the process of ensuring offenders are held accountable (Holler, 2015:106-107; Zehr & Gohar, 2002:22).

Participation, however, is entirely voluntary for all participants. Parties should be allowed sufficient time to consider partaking in interventions and informed of their right to withdraw from participation at any time (Anderson, 2017:175; Department of Justice and Constitutional Development, 2011:4-5; Steyn & Sadiki, 2018:231). Participation based on fear of returning to court or facing prosecution or the use of psychological pressures, guilt or other persuasion methods does not constitute voluntary participation. It is necessary to ensure that all participants are in no way coerced or pressured to take part but that they do so voluntarily (Ward & Langlands, 2008:362; Zernova, 2007:498-502).

In the event that a party does not want to take part, alternative options could be used, such as: parties may attend some of the FGC, a surrogate may be used, a facilitator may go between the victim and offender, secondary victims may attend without the primary victim present, parties may participate by writing letters, phoning, via a video

link and so forth (Dzur, 2017:490; Gxubane, 2016:11-12; Umbreit et al., 2007:33; Zehr & Gohar, 2002:23). Although the best option is for parties to come together directly, alternatives may also be restorative (Dzur, 2017:490; Gxubane, 2016:11-12; Umbreit et al., 2007:33; Zehr & Gohar, 2002:23).

If the offender accepts responsibility and all parties agree to participate, an FGC may convene. There are three main stages of an FGC after the child has been referred (Steyn & Sadiki, 2018:231; Tshem, 2009:65-66). The first stage is the preparation phase whereby facilitators discuss logistics, procedures, needs and issues with each participant. This is followed by the facilitation or meeting phase where the offender, victim, and their supporters enter into dialogue and possibly form a restitution agreement. Lastly, the monitoring stage, involves follow-up and aftercare with parties (Steyn & Sadiki, 2018:233; Tshem, 2009:65-66).

At all stages, FGC should be implemented in a manner that promotes fairness, equality, rule of law, and the human rights provisions provided for by the South African Constitution (Department of Justice and Constitutional Development, 2011:4). Victims and offenders should have access to legal representatives and legal advice throughout the process (Braithwaite, 2002:566-567; Department of Justice and Constitutional Development, 2011:5). Participants should be fully informed about their human rights as well as the purposes and outcomes of the FGC (Department of Justice and Constitutional Development, 2011:4-5).

At all stages parties should be enabled to equally participate, and all processes should be fair and balanced, should remain confidential, should uphold the dignity of all participants and should in no way discriminate (Department of Justice and Constitutional Development, 2011:5). When children are involved, section 28(2) of the Constitution is of specific importance in that at all times the best interests of the child must be of paramount importance. This applies to both victims and offenders who are children (Tshem, 2009:19).

Furthermore, FGCs should be flexible to the needs and cultures of both the offender and victim (Zehr & Gohar; 2002:51). Venue, language and culture, timing, and readiness of participants should be considered (Gxubane, 2016:16-17; Songca &

Karels, 2016:455; Steyn & Sadiki, 2018:232). The venue should be neutral, such as a community or church building, and easily accessible to all participants (Gxubane, 2016:16-17; Songca & Karels, 2016:455; Steyn & Sadiki, 2018:232). Language could create barriers and bias, which is especially applicable in the South African scenario where there are eleven official languages, with some considered inferior due to apartheid. To overcome this barrier, FGC processes should be conducted in the language of participants where possible, and a translator used if necessary (Gxubane, 2016:16-17).

In ensuring timing and readiness of participants, the first stage, consisting of the preparation for the FGC is implemented. This is a crucial step since preparation of all parties is essential in ensuring the success of the intervention (Dzur, 2017:488; Steyn & Sadiki, 2018:232). Facilitators must have the necessary skills for preparation, including the abilities to counsel, orientate, determine the readiness of parties to participate, identify factors that contributed to the offence, deal with strong emotions, and deal with biases (Steyn, 2010:113-117).

Preparation highlights any challenges that may arise especially with regard to participants from diverse backgrounds, i.e. language and cultural differences (Steyn & Sadiki, 2018:232). Victims and offenders should be adequately prepared emotionally and intellectually to ensure that they are orientated, ready for participation and not at risk of any harm through participation (Carroll, 2016:138; Steyn, 2010:116-117). Every effort should be made to ensure that participants, especially children, understand the process of an FGC and are informed of their rights (Department of Justice and Constitutional Development, 2011:4-6).

Participants are counselled during the preparation stage to assist in readying them for participation, to allow them the necessary time to process their emotions and the event, and to identify and handle strong emotions, biases, cultural and language logistics, and any other issues and needs that may present (Department of Justice and Constitutional Development, 2011:5-6; Gxubane, 2012a:63-64; Steyn, 2010:14-117). Offenders are provided a chance to explain the factors that contributed to the offence, such as substance abuse or domestic violence (Steyn & Sadiki, 2018:232; Steyn, 2010:116-117). Preparation of victims allows facilitators to assess the impact

of the offence on them and be aware of any triggers, emotional issues, and trauma's the victim has, and in this way offer them protection against intimidation and harm during the FGC (Steyn & Sadiki, 2018:232; Umbriet et al., 2007:31). During the facilitation stage of an FGC, child participants may feel intimidated due to the presence of adults. Adequate preparation ensures child participants have their voices heard (Dzur, 2017:488).

After adequate preparation of all parties, the FGC may convene, whereby stage two (the facilitation phase) commences. During this stage, all participants must be afforded the chance to share their stories and feelings in a safe and informal setting not dominated by legal jargon and political discourse and all cultures, languages, ages, and levels of ability and disability must be considered and accommodated (Steyn & Sadiki, 2018:232; Hargovan, 2013:33; Naylor, 2010:668-669; Zehr & Gohar, 2002:51). Facilitators should be accepting of diverse cultures and have the necessary insight and skills to manage cultural and socio-economic imbalances (Steyn, 2010:113-117). Conferences should be conducted in the language of participants where possible, and a translator used if necessary (Gxubane, 2016:16-17). An understanding of personal biases and neutrality by the facilitator is required (Steyn, 2010:113-117).

Furthermore, facilitators must be adequately prepared and trained impartial individuals who have a comprehensive knowledge of legislation and the rights of parties, as well as the necessary skills to mediate, resolve conflict, negotiate, motivate, communicate and interview (Department of Justice and Constitutional Development, 2011:6; Carroll, 2016:138; Slater, Lambie & McDowell, 2015:639). They should be equipped to deal with the needs and abilities of all parties, especially children, and to intervene in cases where it would appear that a party may be harmed. In cases involving children, an extensive knowledge of youths and their development is essential (Carroll, 2016:138; Slater et al., 2015:639; Steyn, 2010:113-117; Umbreit et al., 2007:30-32).

At the start of an FGC, every effort should be made by the facilitator to ensure that participants understand the process and are acknowledged and made to feel welcome (Carroll, 2016:138; Department of Justice and Constitutional Development, 2011:5-6). Support and positive encouragement from adults during the facilitation stage aid in ensuring child participants do not feel intimidated and excluded. It is important that

child participants have an adult present who can fulfil a supportive and encouraging role during facilitation, whether this be a family member, mentor, teacher and so forth (Dzur, 2017:488).

During the FGC, parties are aided in an open and honest discussion about the crime and its impact (Schoeman, 2014:np). This conversation provides the opportunity for the offender, victim/s, and their families to describe and discuss the offence and its effect, to ask questions, and to gain understanding of the criminal event (Tshem, 2009:65-66; Zehr & Gohar, 2002:25). Facilitators must be impartial and able to balance the needs of both the victim and offender equally (Zehr & Gohar, 2002:51).

The victim's role in the conference should be fair and their rights foremost (Steyn, 2010:113-117). During the conference, the victim and their support persons are provided the chance to express their feelings and share their experience and the harm and impact of the offence on their life, whether it be financial, psychological, physical and so forth. They are provided the opportunity to question the offender about the offence and the offender is able to respond (Els, 2012:74; Naylor, 2010:668-669; Zehr & Gohar, 2002:25).

This responds to the needs of victims, empowers them, and gives voice to their experiences and frustrations (Schoeman, 2014:np; Steyn, 2010:115-117; Wilson et al., 2017:14). Victims are given direct input in their own case and afforded the chance to face their offenders themselves, rather than through a court process (Gxubane, 2012:108-109; Steyn, 2010:115-117). Here, they can explain the impact of the crime to offenders and gain an understanding as to why the crime was committed (Janse van Rensburg, 2010:41-42). Through this process, victims can deal with the fears, prejudices, questions, and assumptions that result from being a victim of a crime. Victim guilt is eased as assurance is given to victims that they are not to blame for the offence (Carroll, 2016:139; Holler, 2015:122-123). Fear of re-victimisation may be calmed through understanding why an offender chose to commit the crime (Leonard & Kenny, 2011:76).

Victims are personally able to hold offenders accountable and offenders are provided with a fair, safe, controlled, and supportive environment to explain why they committed

the offence, offer an apology, and tell their side of the story (Janse van Rensburg, 2010:53-56; Wilson et al., 2017:14). Accountability is encouraged by offenders having to discuss and describe the offence, as this requires acceptance of guilt. Offenders are confronted with the victim who expresses the harm they suffered as a result of the crime, as well as community's disapproval of the crime (Holler, 2015:106-107; Naylor, 2010:678; Zehr & Gohar, 2002:22).

Holler (2015:106-107) opines that seeing the effect that their crime had on the victim and community is a form of accountability never before matched in formal justice systems. Child offenders are allowed the chance to stop and consider what happened without being pressured. The role of adult participants is to support and assist the child. Child offenders are provided with decision making skills and the opportunity to use them, as well as the chance to learn from mistakes, apologise, repent, and own responsibility. Empathy, compassion, remorse, and a desire to change is instilled through the FGC process (Buckingham, 2013:858-859). Furthermore, social interaction competency is developed, emotional growth occurs, restoration of relationships is achieved, awareness of part and place in community is created, and a means to make amends to the victim and community is provided to the child offender (Connolly, 2010:374; cf. Holler, 2015).

FGC aims mainly to provide reconciliation, restoration, support, and healing through dialogue (Els, 2012:74; Zehr & Gohar, 2002:21-23). Shame, apology, forgiveness, mercy, and compassion are encouraged but not forced (Department of Justice and Constitutional Development, 2011:6). Parties do not have to forgive or reconcile; the decision is left in their hands. However, the environment of an FGC is conducive to forgiveness, healing, and reconciliation (Kilekamajenga, 2018:65-66; Zehr & Gohar, 2002:6-10).

The FGC ends when consensus is reached. The parties may conclude with an outcome and the reaching of a restitution/reparation agreement (Tshem, 2009:65-66; Zehr & Gohar, 2002:50-51). Neither party should be forced into accepting a restitution/reparation agreement (Department of Justice and Constitutional Development, 2011:5), however if one is created the facilitator must ensure all affected parties have a say in the agreement, accept and agree to it, and are comfortable with

it (Dzur, 2017:498). If legal representatives attend the FGC, participants should still be allowed to express their opinions and make decisions; legal representatives should merely be present in case participants request a professional opinion (Braithwaite, 2002:566-567).

In addition to the process of dialogue and accountability, the restitution/reparation agreement provides the offender with the means to make amendment to the victim (Bradshaw & Roseborough, 2005:22). Agreements also open the door for offender rehabilitation, allow the needs of offenders to be met (i.e. therapy, education, etc.) and provide the offender a chance to develop pro-social, interactive, cognitive, and self-control skills (Anderson, 2017:169-170; Holler, 2015:119-120; Schoeman, 2014:np).

Options included within the restorative agreement must be proportionate to the harm caused, or 'just deserts' (Department of Justice and Constitutional Development, 2011:6). Agreements should not contain punishments which exceed that which could have been imposed by a court of law, or that are degrading or humiliating (Braithwaite, 2002:567). Recommendations from an FGC can be imposed, amended, or substituted by the court (Dzur, 2017:498).

The agreement stage concludes the FGC however, FGC is only the beginning of the intervention. Follow-up for the offender and the victim is critically important (Steyn, 2010:115). The third phase of the FGC, namely the monitoring phase is therefore implemented. After-care services, emotional support, follow-up by social workers, and NGOs, and support groups offering social support for effective reintegration should be offered to parties following an FGC (Gxubane, 2012a:154-159; Tshem, 2009:121-124).

For example, after completion of interventions, NICRO (2016:np) monitors the offender at three-month, six-month, and 12-month intervals. The offender must be monitored as the court expects the agreement to be fulfilled, and thus it is necessary to ensure that offenders fulfil the agreement to completion and do not re-offend (Naylor, 2010:665-666; Steyn & Sadiki, 2018:232-233). Victims should be empowered after the FGC and should receive follow-up services to ensure they are coping (Dewa, 2013:58).

3.3 FAMILY GROUP CONFERENCING IN THE CHILD JUSTICE ACT

The CJA provides for the use of any restorative justice intervention as a diversion or sentencing option. Diversion is available in three ways. Section 41 provides that a prosecutor may divert a child who has committed a schedule one offence with any level one diversion option, prior the preliminary enquiry as long as the child meets the diversion requirements set out in section 52 and with consideration of criminal capacity and previous diversions. Section 52(1) and 49(1) provide that a matter may also be diverted at the preliminary inquiry after consideration of criminal capacity and if the child meets the diversion requirements in section 52. Section 52(1) and 67 provide that a child may also be diverted during trial. Schedule 1 or 2 offences may be diverted after consideration of the views of the victim and in consultation with the police official responsible for the investigation. Schedule 3 offences may be diverted if exceptional circumstances exist and after consideration of the views of the victim, and consultation with the police official responsible for the investigation.

Diversion can only be implemented, according to section 52(1)(a)(b)(c) & (d) of the CJA, if the child accepts responsibility for the offence and has not been unduly influenced to do so; there is a prima facie case against the child; and the child and available parents or guardian's consent to diversion. Section 53(2) of the CJA provides that level one diversion options may be used for schedule one offences, and level two diversion options for schedule two and three offences. Section 53(7), however, states that a child may be ordered to appear at a FGC, VOM, or any other restorative justice option in place of any level one or two diversion options, or in combination with any of these options. Therefore, a child may be diverted to an FGC prior to or at the preliminary inquiry or at the child justice court for any schedule one, two or three offence.

In addition, restorative justice options may also be used as a sentence or sentencing tool. Section 73(1) of the CJA provides that a child justice court may refer a child who is convicted for an offence to a FGC, VOM, or any other restorative justice option. Section 69(2) states that to encourage the use of a restorative justice approach, and to achieve the objectives of sentencing, a combination of sentences may be used. The objectives of sentencing are laid out in section 69(1) and include encouraging

accountability by the child; promoting an individualised response balanced according to the child's circumstances, the offence and the interests of society; promoting reintegration; providing services to meet reintegration needs; and using imprisonment only as a measure of last resort.

Restorative justice options are most often implemented for diversion (Gxubane, 2012:113). According to section 51 of the CJA, diversion aims to keep children away from the formal criminal justice system, encourage accountability, meet individual needs, promote reintegration, give those affected by the offence a voice, encourage restitution or compensation to the victim, promote reconciliation, prevent stigmatisation, reduce potential re-offending, prevent the child from having a criminal record and promote the well-being, dignity and development of the child. These aims are similar to those of restorative justice and FGC as discussed in previous chapters. In addition, section 55(2)(b) states that as far as is reasonable, diversion programmes should include a restorative justice element which aims to heal relationships, including the relationship with the victim.

As mentioned, the specific restorative justice interventions provided for by the CJA are FGC (section 61) and VOM (section 62). Section 61 provides guidelines for implementing an FGC, as well as a definition as previously discussed. Section 61(1)(b) continues that an FGC may only take place if both the victim and the child offender consent to participation. Once ordered, section 61(2) informs that the FGC must be convened within 21 days, in that a time, date and place must be set and the persons who are to attend must be timeously notified of these details.

Persons that are allowed to attend a FGC, according to section 61(3)(b) of the CJA, include the child; his/her parents, guardians or other appropriate adults; any person requested by the child; the victim; his/her parents, guardians or other appropriate adults; any support person requested by the victim; the probation officer if they are not facilitating; the prosecutor; any police official; a member from the child's community as determined by the facilitator; and any other person authorised by the facilitator.

During the FGC, section 61(5) determines that participants follow the procedure agreed upon by them and *may* agree to a plan in respect of the child. If the participants

do not reach agreement, section 61(8) provides that the FGC must be closed, and the matter referred back to the magistrate, inquiry magistrate, or child justice court by the probation officer.

Section 61(6)(a) informs that agreements can include any options mentioned in section 53(3) of the CJA, or any other appropriate option that is consistent with the principles of the CJA. Section 53(3) includes the following options that can be included in an agreement: oral or written apology, formal caution, placement under a supervision and guidance order, placement under a reporting order, compulsory school attendance order, family time order, peer association order, good behaviour order, an order prohibiting the child from visiting, frequenting or appearing at a specified place, referral to counselling or therapy, compulsory attendance at a specified vocational, educational or therapeutic service, symbolic restitution, restitution of a specified object if possible, community service, provision of some service or benefit by the child to the victim/victims, payment of compensation if affordable; and where there is no one to whom restitution or compensation can be made, provision of some service or benefit or payment of compensation to a community, charity or welfare organisation or institution.

In addition, as mentioned in section 61(6)(b) of the CJA, agreements must record the objectives the child must reach, the time period in which these must be reached, details of services and assistance for the child and their family, persons or organisations who will provide these, the responsibilities of the child and family, any other relevant matters related to education, employment, recreation and welfare of the child, and the mechanism available to monitor the plan.

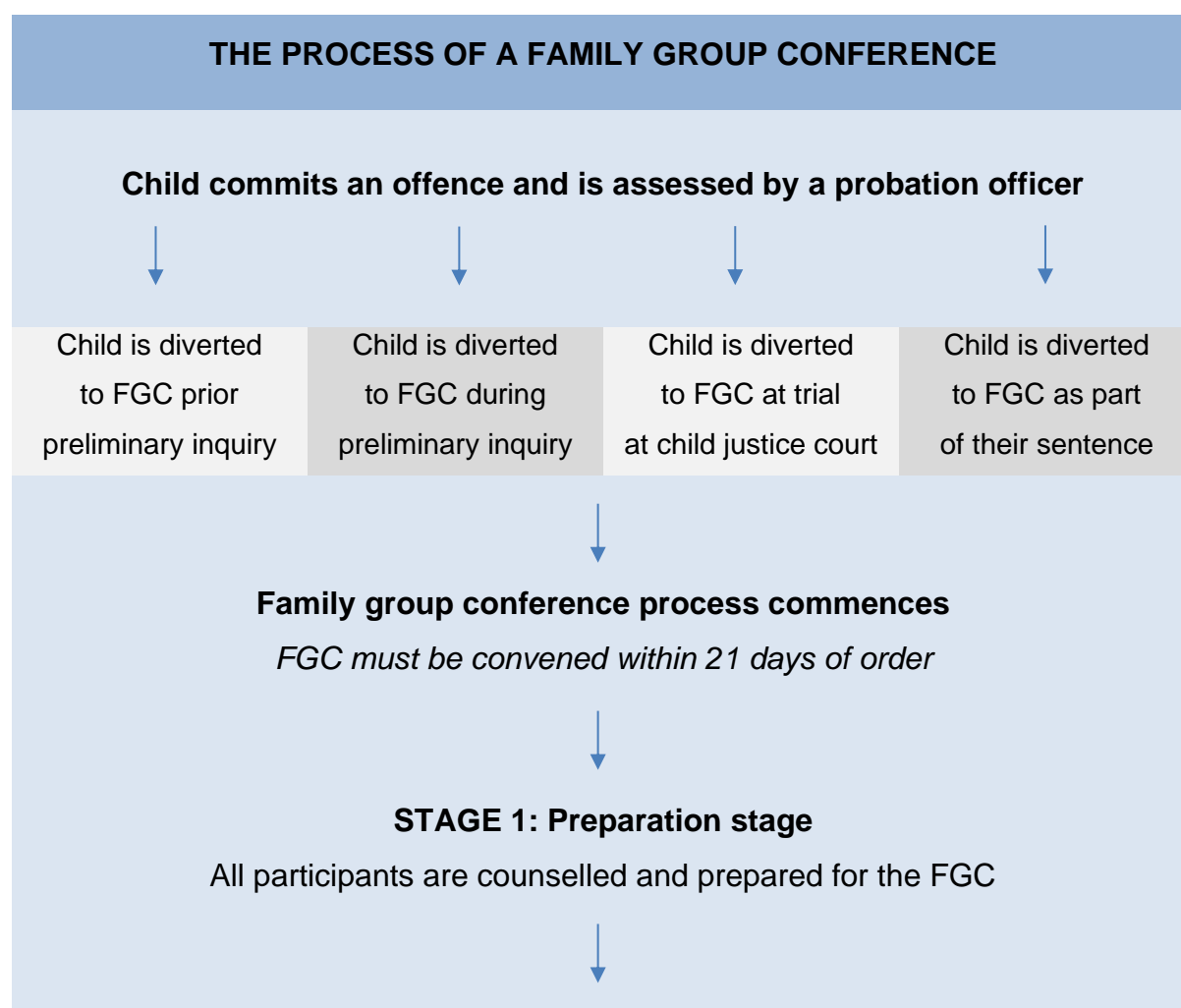
Section 57 states that a probation officer - or other suitable person - must be identified to monitor the child's compliance with the diversion order. Once the child has complied with the diversion order a prescribed report is submitted to the relevant prosecutor. If the child does not comply with the order, section 58 applies, which informs that the child must appear before the magistrate, inquiry magistrate or child justice court.

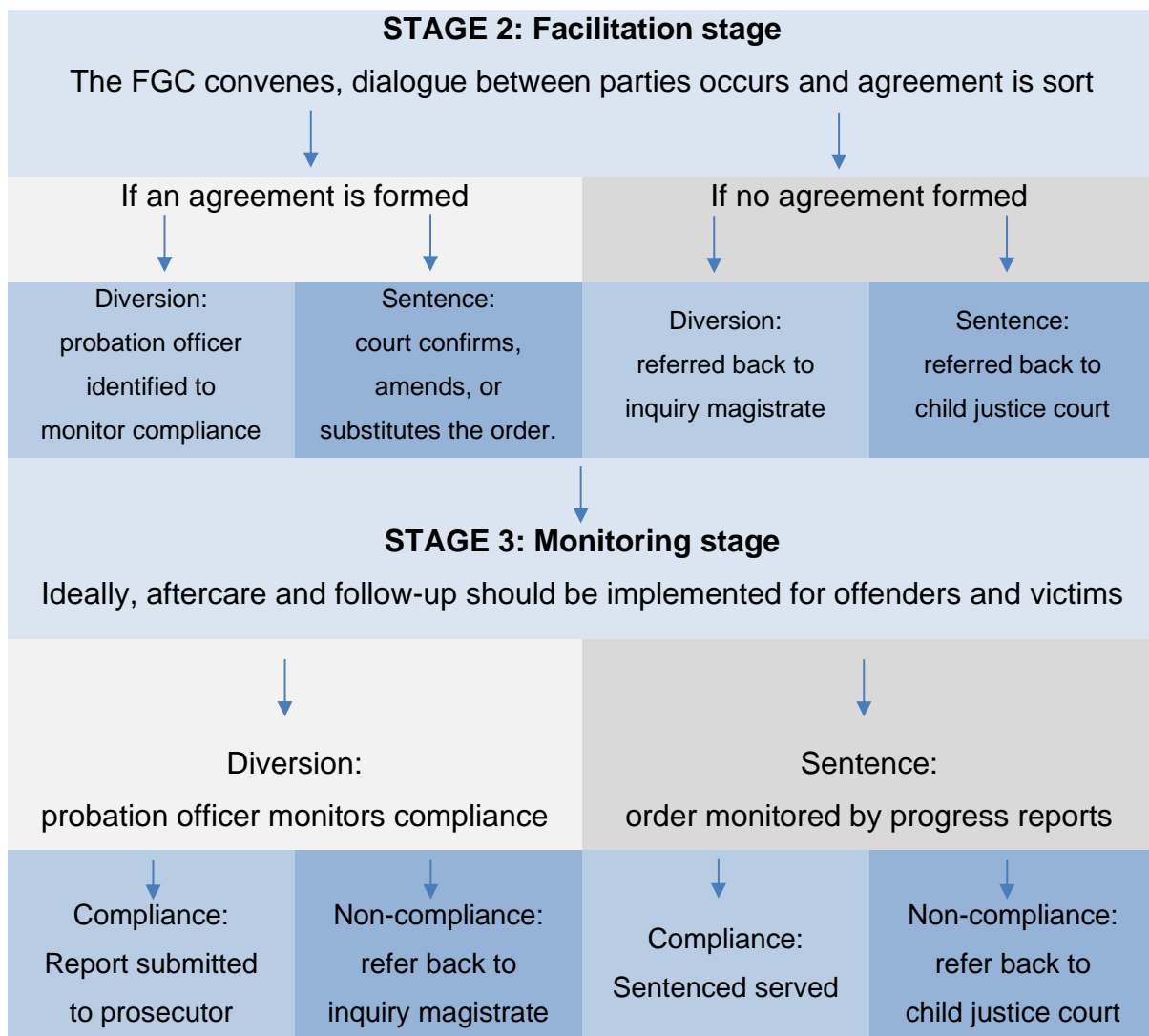
With regards to the implementation of FGC as a sentence, section 73(2) of the CJA notes that written recommendations resulting from the FGC agreement may be

confirmed, amended, or substituted by the child justice court. On confirmation of the agreement arising from the FGC, section 73(4) of the CJA notes that the child justice court must ensure that the concerned probation officer monitors the child's compliance, provides progress reports and warns the child that a failure to comply will result in the child returning to the child justice court.

Based on the information provided in chapter 3.2 regarding the process of an FGC according to literature; as well as that provided in 3.3 pertaining to legislation, the following is a summary of the process an FGC should ideally follow within the South African child justice context:

TABLE 2: THE PROCESS OF FAMILY GROUP CONFERENCING





3.4 DIFFERENTIATING BETWEEN FAMILY GROUP CONFERCING AND VICTIM OFFENDER MEDIATION

FGC and VOM interventions are similar in that they are both restorative in nature and bring parties together for dialogue to promote reconciliation, restoration, healing, and restitution (Schoeman, 2014:np; Zehr & Gohar, 2002:49-51). Zehr and Gohar (2002:49-50) proffer that models of restorative justice differ on 'who' may attend. VOM involves bringing the victim and offender together to seek a resolution that is acceptable and beneficial to both parties (Schoeman, 2014:np; Zehr & Gohar, 2002:49). FGC, however, not only includes the offender and victim but allows for the inclusion of family and other relevant parties (Schoeman, 2014:np; Zehr & Gohar, 2002:50).

This distinction is made in literature by researchers (Kilekamajenga, 2018:75; Schoeman, 2014:np; Songca & Karels, 2016: 453; Tsui, 2014: 639-640; Zehr & Gohar, 2002:49) as well as in the CJA. As mentioned above section 61 provides guidelines for implementing an FGC with subsection 3(b) providing a list of people who may attend. Section 62 of the CJA provides guidelines for VOM.

Section 62(1)(a) starts with a definition of VOM: “...an informal procedure which is intended to bring a child who is alleged to have committed an offence and the victim together at which a plan is developed on how the child will redress the effects of the offence.” Following this, section 62(2) states that the information provided in section 61(2)(4)(5)(6)(7)(8) and (9) is applied to VOM. Section 61(3), which discusses who may attend is excluded. Thus, the implication is that VOMs only include the victim and offender.

Umbreit et al. (2007: 28-29) propose a number of potential goals that restorative justice interventions attempt to achieve. It would seem from these that VOM attempts to humanise the justice process, provide the victim a voice, aid in healing, hold the offender accountable and develop their empathy, offer an alternative to incarceration and ensure the victims gain restitution (Umbreit et al., 2007: 28-29). The focus is on the victim and offender and what they need to restore their relationship.

Similarly, FGC brings together the offender and victim to provide understanding, accountability, and adequate response to the offence (Tsui, 2014:639-640). However, the inclusion of community, family, and support persons for both the victim and offender is especially important with regards to FGC (Zehr & Gohar, 2002:51). These individuals play a significant role for the offender and victim in offering them support and assistance; are impacted by the offence as well; and are also affected in their involvement in dealing with offenders and crime in their community (Kilekamajenga, 2018:75; Umbreit et al., 2007:28-29; Zehr & Gohar, 2002:50-51). Zehr and Gohar (2002:51) refer to FGC as the ‘family empowerment model.’ The focus is on what the offender and victim need to restore their relationship but includes what the family and community needs and can do to assist in the restoration.

Although literature and legislation provide this distinction, some research studies found that some VOMs take place with support persons present. Hargovan (2012:17) refers to mediations in South Africa taking place inclusive of the offender, the victim, and their support persons. Her research included adult participants. Umbreit et al. (2007:28-29) note that in Oregon in the USA, some VOMs include support persons. The occurrence, as well as the impact and importance thereof were questioned during the empirical study discussed later in this document.

3.5 RESEARCH FINDINGS REGARDING FAMILY GROUP CONFERENCING

According to Batley and Skelton (2019:3-4), local and international research has found restorative justice to have a positive impact on reducing/preventing criminal behaviour, reducing PTSD symptoms, reducing victims desire for revenge and in increasing victim and offender satisfaction with the justice system. Slater et al. (2015:624) interviewed long-serving co-ordinators and focus groups of practitioners involved in FGC in New Zealand. Participants were of the opinion that FGCs were generally effective, culturally versatile, flexible, and suitable for dealing with the behaviour of most of the children involved in criminal offences.

FGC is said to be a more cost and time effective option with several potential benefits such as increased satisfaction with the justice system, reconciliation, restoration, accountability, and crime reduction and prevention (Tshem, 2009:50-51; Tsui, 2014:643-644; Wilson et al., 2017:15). However, empirical evidence is needed to verify the effectiveness of FGC (Gal & Moyal, 2011:1014). This section presents findings from international and national research regarding FGC.

It is to be noted that not all research studies refer to 'FGC,' and some researchers used the terms 'conferencing' or 'restorative justice conferencing.' However, the method and process of implementation was the same as that described in this research, thus the term 'FGC/conference' will be used.

3.5.1 International research findings

Wilson et al. (2017:15) discuss short-and long-term effects of FGC. Short-term benefits include greater satisfaction with the justice system and accountability, reconciliation, healing, relationship reparation, closure, and forgiveness. Long-term benefits include a lowered recidivism rate, and a reduction in expenditure (Wilson et al., 2017:15). Findings also indicate that process factors such as respectful and fair treatment of all parties, voluntary participation, support for all parties, as well as adequate and equal opportunity for dialogue impact effectiveness (Bradshaw & Roseborough, 2005:21; Umbreit et al., 2007:30-32). Findings on the short- and long-term effects, as well as process effects of FGC reflected in international research will be presented below.

3.5.1.1 International findings regarding short-term effects of family group conferencing

In general, all parties (offenders, victims, supporters) involved in FGC find it to be satisfactory on some level. Bradshaw and Roseborough (2005:24-26) conducted the first meta-analysis of studies in the USA on the effect of FGC on satisfaction. Nine studies were conducted with 2880 child offenders involved in the sample. Results indicated that victim satisfaction was high, offender satisfaction was moderate, and parent and supporter satisfaction was mild. Overall, as an alternative approach to adjudication, FGC was found to be a more satisfactory approach than the criminal justice system.

More recently, Wilson et al. (2017:5-6) conducted a meta-analysis of studies conducted in the United States of America and Australia, involving offenders 18 years and under who had taken part in restorative justice interventions – including VOM, FGC or circle sentencing. The majority of the child offenders perceived the intervention as fair, were more satisfied, and expressed an attitude that was less supportive towards delinquency.

Six FGCs held in Dublin between 2002-2008 were observed by Leonard and Kenny (2011:64). Victim satisfaction was found to be high in most of the cases. Reintegrative Shaming Experiments (RISE), which included four experimental-longitudinal tests,

were conducted to research FGCs implemented in Australia (Australian National University, 2017:np). Using RISE data, Gal and Moyal (2011:1019) examined whether child and adult victims benefit from FGC. Findings indicated that victims involved in conferences were more satisfied than those involved in formal court processes.

However, Gal and Moyal (2011:1023-1029) averred that child victims benefited less than adult victims from conferences. A number of themes were identified that could explain this. There seemed to be an adult-child power imbalance, whereby child victims felt that parents took control, did not let them decide if they wanted to participate, dominated the conference, were spoken to by facilitators, and spoke for their children. A lack of sensitivity with regards to special needs (i.e. language barriers, disabilities), and bad facilitation was also noted. It was also noted that adult conferences were usually for property crimes, whereas juvenile conferences were for violent crimes, which could be the cause for less satisfaction experienced by child victims, which suggests that the type of crime involved affects satisfaction levels.

Overall, however, FGC seems more satisfactory than formal court systems to all participants. In addition to satisfaction as a short-term effect, findings on the impact of FGC on reconciliation, accountability, relationship reparation, closure, healing, and forgiveness have been considered. In six FGCs held in Dublin, researchers observed that the offenders were offered the chance to make reparation, whereby most of them did. They were also offered the chance to accept responsibility and experience shame. In conferences where victims and parents were present, most of the offenders did display shame or remorse on some level. Offenders were also encouraged and advised how to put the event behind them. (Leonard & Kenny, 2011:64-69).

Using data from RISE from 1995-1999, Kim and Gerber (2012:1070-1075) examined 249 child offenders who were either property offenders, shoplifters, or violent offenders. In comparison to court proceedings, results indicated that FGCs positively influenced perceptions regarding repaying the victim and society, and the degree of repentance. Perceptions were also correlated with age, whereby younger offenders were more likely to perceive conferences as an opportunity to repay the victim and society, and to repent. Yet, Wilson et al. (2017:6) found contradictory results for offenders stating that when considering whether the restorative approach had

impacted the emotional well-being of offenders, more so than the retributive approach, there was no significant outcome identified.

Angel, Sherman, Strang, Ariel, Bennett, Inkpen, Keane and Richmond (cf. 2014) note a key emotional support theme for victims. Victims often suffer from post-traumatic stress symptoms (PTSS) or post-traumatic stress disorder (PTSD) following a crime. Victims and offenders of burglary or robbery cases in London were assigned to FGCs as well as formal justice process involvement. PTSS in 192 victims after one month of treatment was then measured. Victims who participated in an FGC showed reduced levels of PTSS and possible PTSD in short-term follow up assessments. 49% less victims involved in FGCs showed PTSS or possible PTSD signs. Given the lack of mental health care and interventions to aid victims in formal court processes, FGC could provide emotional closure and reduce PTSS in crime victims. Batley and Skelton (2019:3) also note that local and international research has found restorative justice to have a positive impact on reducing PTSD symptoms.

The impact of the Calgary Community Conferencing Restorative Justice Program in Canada on victims was compared to the impact of a formal court with specific focus on accountability, relationship repair and closure. Results indicated a more positive outcome for those involved in FGC (cf. Calhoun & Pelech, 2013). Wilson et al. (2017:6) noted that victims showed improved attitudes towards offenders, were more willing to forgive offenders, felt their opinions and views were heard, and that the offenders had been held accountable.

Zernova's (2007:492-498) findings were similar and indicated that despite the fact that disapproval was expressed, victims were generally understanding, kind, forgiving, and even at times altruistic in their offerings towards offenders. Yet Zernova (2007:492-498) noted that it appeared that victims did not gain obvious benefits from FGCs, but rather that offenders were the main aim. Findings did not support the claim that the needs of the victims were primary but rather most victims felt that the main beneficiaries were offenders, and some stated that the main aim is to rehabilitate offenders. It would appear from the findings that FGC does generally have a positive effect on reconciliation, accountability, relationship reparation, closure, and

forgiveness for both offenders and victims, however, more priority must be given to victims during the process.

The short-term effects of accountability, reconciliation, relationship reparation, closure and forgiveness are often hindered by a lack of attendance, especially by victims. Marsh and Maruna (2016:376-380) found that FGCs with no victim's present had a lesser effect. Offenders found them irrelevant and felt that the crime could not be serious if the victim did not attend.

Concurring with Marsh and Maruna, participants interviewed by Slater et al. (2015:638) also noted low victim attendance, and those interviewed by Dzur (cf.2017) stated that low victim attendance was a problem with national figures (New Zealand context) sitting at 28%. Reasons given for none-attendance by victims were a lack of professionals to counsel and encourage participants, and a lack of interest by victims who were not directly affected by the offence (i.e. shoplifting) (Dzur, 2017:489; Slater et al., 2015:638).

In contrast, it was noted that victim attendance was positively affected by police officers promoting conferencing based on legal knowledge and knowledge of the process during their first contact with victims. Face-to-face consultations with co-ordinators who could clarify misconceptions also improved victim attendance. This highlights the importance of training those who have initial and continuous contact with participants (Dzur, 2017:489; Slater et al., 2015:638). One professional stated that he worked especially hard to include victims and placed his personal victim attendance rates at 50 to 60% (Dzur, 2017:489). Thus, with adequately trained facilitators, victim attendance rises.

3.5.1.2 International findings regarding long-term effects of family group conferencing

Reviews of the long-term impact of FGC seem to show mixed results. Bradshaw and Roseborough (2005:24-26) found that FGC did not affect recidivism. Wilson et al. (2017: 6) noted that although FGC was overall positive with regards to future delinquency, the more credible studies showed a small effect. They concluded that

results are promising but inconclusive (Wilson et al., 2017:36). Similarly, Kim and Gerber (2012:1070-1071) found that in comparison to court proceedings, results indicated that FGCs do not have a significant effect on the perceptions of child offenders on future offending.

However, Mongold and Edwards (2014:206-212) found a reduction in the recidivism rate and cost and time spent in courts. Payne and Weatherburn (2015:349), who conducted a longitudinal study, tracked 8797 child offenders over ten years who were either cautioned, conferenced, or convicted. They found that child offenders whose first contact with the justice system was court appearance rather than conferencing or cautioning, were more likely to be reconvicted within the next ten years, especially if they were male, indigenous, or violent.

Chan (2013:12-16) reviewed the results of two studies of FGC with juveniles in Singapore. The majority of the offenders did not re-offend stating they did not want to break the law again as they feared the courts. Wong et al. (2016: np) conducted a meta-analysis on 21 studies involving children between 12-18 years of age who were involved in diversionary interventions with a restorative component in Canada, the United States of America, Australia, New Zealand, and Western Europe. Findings indicated that restorative justice programmes are generally effective in reducing recidivism.

In the Indianapolis Experiment, McGarrell and Hipple (2007:230-238) conducted research using 782 children, of which 400 were part of an FGC experimental group and 382 were in the control group. Research was conducted 24-months after the FGC. They found that in comparison with the control group participation, FGC lessened the likelihood of re-offending. This was especially relevant during the first six months after the FGC. A further analysis of this data was undertaken by Jeong, McGarrell and Hipple in 2012 (2012:380-383) with the follow up period being extended to 12 years. Findings indicated that the positive outcome experienced after 24-months, did not continue over 12 years. Researchers did not find this surprising stating that FGC is a short-term intervention, with FGCs lasting about an hour. They advise that FGCs become routine rather than a one-off response.

The age factor was also noted in studies. Payne and Weatherburn (2015:355-358) found that offenders aged 10-12 years when committing their first offence were more likely to be re-convicted than those aged 16-17 years. However, Kim and Gerber (2012:1075) found the opposite true in that younger offenders were more likely to perceive FGCs as preventative of future offences. McGarrell and Hipple (2007:230-238) also found that FGC lessened the likelihood of re-offending especially with younger participants and with those who completed their diversion programmes.

The keeping of agreements can also be considered part of long-term effects. Chan (2013:12) records that 94% of the offenders kept the agreements made due to fear of consequences. Hayes, McGee, Punter and Cerruto (2014:116-118) conducted research using a sample of 32 young offenders involved in an FGC. Of these, 97% confirmed that they had complied with their agreement. Agreements generally included written apologies, community service, working for the victim, completing school, or attendance at other courses or programmes. In addition, their research found that offenders had been satisfied with agreements, and they had been considered fair, satisfactory, and a means by which they could repair the harm they had caused. Research indicates that when offenders view their agreements as fair, they are less likely to re-offend.

Another key finding is that the more creative and personalised, the more effective plans are. Furthermore, when these plans use the talents and strengths of the young person in community involvement (i.e. education, employment), they are essentially restorative (Slater et al., 2015: 638-639). Marsh and Maruna (2016:374) highlight this point: they interviewed 24 young individuals who had taken part in an FGC in Ireland and noted that many of the agreements included education orders, counselling, or help for substance abuse; and young offenders felt these were the best support they received and helped them change their behaviour. Some participants developed skills that they were able to use for education, training, and employment. Some co-ordinators interviewed by Slater et al. (2015: 638-639) felt that part of preparation should include collecting information on the strengths and talents of the young person so that a tailor-made plan, with input from other participants within the conference, can be created.

Slater et al. (2015:639) found that monitoring of agreements is important in ensuring they are kept as it provides child offenders with support and ensures plans are completed and/or modified where necessary. The monitoring of plans was considered a weakness, and co-ordinator's felt it was necessary to have one person responsible for plan monitoring (Slater et al., 2015:639).

3.5.1.3 International findings regarding process effects of family group conferencing

FGCs should be respectful, fair, and voluntary, and should provide support to all parties, as well as provide adequate and equal opportunity for dialogue (Bradshaw & Roseborough, 2005:21; Umbreit et al., 2007:30-32). Slater et al. (2015: 637) record that a link exists between the positive experiences and low recidivism rates of young offenders involved in FGC, and the right to have an active role in the FGC as a respectful and dignified process. Marsh and Maruna (2016:376-380) found that young offenders who felt criticised and unfairly treated were more likely to remember the conference negatively.

International findings have been promising with regards to FGCs commencing in a respectful, fair, inclusive, and supportive manner. In most of the FGCs observed in Dublin, Leonard and Kenny (2011:64) noted fair and respectful treatment of the offenders. Of the offenders interviewed by Marsh and Maruna (2016:374) the serious violent offenders experienced a lasting impact from the personal shame of meeting with the victim and hearing the harm they had caused. They described feeling shocked and alarmed at hearing the reality of the financial, emotional, and even physical impacts of their crime on the victims, whereas at the time of commission they were detached. The crime was humanised which resulted in offenders experiencing compassion, empathy, and remorse.

Leonard and Kenny (2011:64) observed, with regards to victims, that in cases where victims participated, they showed the offenders sympathy and were interested in reintegrating them into the community. Although offender support was not explicitly sought by the facilitator or the juvenile liaison officer, there was a dedicated support element in the FGCs coming from both supporters of the offender, and victim.

A number of authors have voiced concerns regarding too much focus being placed on offender needs, and too little on the victim needs during conferences (Carroll, 2016:125-126; Chan, 2013:8; Zernova, 2007:492-498). As mentioned above, Zernova's (2007:492-498) findings did not support the claim that the needs of the victims were primary but rather most victims felt that the main beneficiaries were offenders, and some stated that the main aim is to rehabilitate offenders. Findings from Chan (2013:8) also demonstrated that conferences were focused more on the offender. Carroll (2016:125-126) notes that there is a chance that victims may feel intimidated by offenders and this could cause re-victimisation. Facilitators may also not allow victims to express their emotions and anger in an attempt to reach reconciliation and forgiveness, thus causing the victim guilt rather than healing.

Fraser (2017:185-187) articulates a contrary caution and avers that FGC has been praised for prioritising the victim and empowering the family. Yet there is potential that through this the offender can be neglected, and accountability can be shifted to the offender's family. As the offender is encouraged to accept responsibility, the family might feel accused. They may also be merely used as a mechanism to provide the victim with healing.

In addition, FGCs may be problematic if adults take over. If parties are unequal in their bargaining power, and feel pressured to reach agreement, empowerment could be affected (Fraser, 2017:188). Power imbalances between adults and children could result which could affect the *restorativeness* of FGCs. Offenders may feel that the focus is on punishment and reparation rather than restoration (Hayes et al., 2014:114-115).

Research findings confirm that power imbalances between adults and children have indeed been a problem. Gal and Moyal (2011:1023-1029) identified adult-child power imbalances whereby child victims felt that parents took control, did not let them decide if they wanted to participate, dominated the intervention, were spoken to by the facilitators at the sake of the child, and spoke for their children.

In interviews with professionals, Dzur (2017:488) was informed that child participants may feel intimidated during an FGC by the presence of adults. It was also noted that

professionals may attend FGCs with a specific outcome in mind which does not coincide with that of the child victim, which could also result in disempowerment. It is necessary to provide for protection against power imbalances. Marsh and Maruna (2016:381) discovered that the most common reparation agreement was community service and most of the offenders felt that the adults imposed this on them, and it was experienced as punishment.

Yet, findings from Leonard and Kenny (2011:67-68) show that the majority of offenders, victims, and supporters were involved in making decisions, understood the procedure and the agreement, appeared to have their say, agreed to the agreement, and did not appear too intimidated to speak. In their study, Hayes et al. (2014:123) discovered that all offenders were involved and enthusiastic when developing the agreement, and the majority considered their agreements to be fair, satisfactory, and a means by which they could repair the harm they had caused. Offenders felt that the agreements were proportionate to the offence, and that they were not pressurised into agreeing.

In response to the number of issues that can arise which affect the implementation of a fair, supportive and respectful FGC, researchers propose that it is necessary to ensure that facilitators are adequately trained, and preparation is properly done for all parties present (Dzur, 2017: 488-493; Wilson et al., 2017:33). Ensuring professionals are adequately trained is key. The facilitator must ensure that what professionals and supportive adults propose is confirmed by the child participant especially, and their family (Dzur, 2017:491-493). In addition, ensuring child participants are adequately prepared prior the conference and that they have a supportive and positive adult present who can assist them to feel more comfortable and encourage them to participate is of vital importance (Dzur, 2017:488).

Wilson et al. (2017:33) found that interventions were more effective when facilitators met with the offenders and victims prior the FGC to prepare them regarding what they could expect, to discuss the crime and its impact on them, to encourage them to consider what they feel will be just in repairing the harm, and to remind participants that the process is voluntary and deal with any concerns or issues. This reiterates the importance of preparation as the first step in the FGC process. Not only does

preparation prevent power imbalances between children and adults, but it also helps to ensure FGCs are implemented with equal consideration for both victims and offenders (Wilson et al., 2017:33).

3.5.2 South African research findings

A limited amount of research exists with regards to FGC in South Africa. Almost all of the studies are out-dated and make use of small samples resulting in findings not being generalisable. However, they do provide some insight into FGC in the South African context. Therefore, findings regarding the short-term effects (satisfaction with the justice system, accountability, reconciliation, relationship reparation, closure and forgiveness); long-term effects (lowered recidivism rate and reduction in expenditure); and process factors (fairness, support, respect and equality) of FGC for child justice in South Africa are presented (Bradshaw & Roseborough, 2005:21; Umbreit et al., 2007:30-32; Wilson et al., 2017:15).

3.5.2.1 National findings regarding short effects of family group conferencing

Research conducted within the South African context has not specifically considered 'satisfaction with the justice system' as a variable. It would seem from studies on FGCs that victims, offenders, and parents were satisfied, however this is not directly stated (cf. Dewa, 2013; cf. Gxubane, 2012a; cf. Gxubane, 2016; cf. Tshem, 2009). Tshem (cf. 2009) interviewed ten child male offenders between 15 and 18 years old and their guardians from the Eastern Cape, who took part in an FGC as part of diversion. Offences committed included assault with the intent to cause grievous bodily harm (GBH), common assault, housebreaking, and theft. Child offenders felt that if they had to choose again, they would opt for FGC and would recommend it. Similarly, parents found FGCs 'fulfilling,' thus implying satisfaction with the process (cf. Tshem, 2009).

Research conducted on implemented FGCs presented the following findings with regards to accountability, reconciliation, relationship reparation, closure, healing, and forgiveness. Tshem (2009:98-116) found that the majority of the child offenders welcomed the idea to ask for forgiveness and make peace with the victim and felt

happy with the final outcome, affirming that FGC is an innovative idea. Child offenders also stated that their relationships with the victims were repaired because of the FGC.

More recently, Gxubane (2012a:iii-v; 2016:13-14) interviewed ex-youth sex offenders (between 10 and 17 years) involved in residential diversion programmes, their significant others (i.e. parent, guardian), and professionals with key roles in their cases. Findings indicate that offenders who had some sort of dialogue, such as an FGC, with their victims achieved some sort of reconciliation and closure through apology and forgiveness. Those who had not had dialogue did not feel closure and reconciliation and often expressed that they would have liked to meet their victims in order to discuss the event and apologise.

Dewa (cf. 2013) studied the experiences of child victims and their caregivers involved in services at the Restorative Justice Centre in Pretoria. A victim of rape, aged 16, and her grandmother took part in an FGC. The victim noted that although she had been hesitant to participate, she was happy that she did as her questions had been answered by the accused and she felt that her feelings were validated by all involved, including the accused's family (Dewa, 2013:51). The girl's caregiver appreciated the opportunity to express anger at the accused and stated that she would recommend the intervention. She further highlighted the Ubuntu principles present in the intervention in that the accused was not ridiculed but rather made aware of the wrongdoing and encouraged to take responsibility (Dewa, 2013:59).

Research has also been conducted whereby offenders, parents, professionals, and service providers have been questioned regarding the potential of FGC. Steyn (2010:7-8) interviewed service providers of FGC at The Restorative Justice centre in Pretoria and criminology lecturers. Participants considered FGC a justifiable practice due to its similarity to traditional methods of conflict resolution based on Ubuntu which involved dialogue, restoration of relationships and accountability (Steyn, 2010:109).

Els (2012:21-22) interviewed parents, the diversion manager, the diversion co-ordinator, and programme facilitators from youth diversion programmes offered at Khulisa, as well as the senior public prosecutor at the court in Pinetown. FGC was not offered, but the diversion co-ordinator and facilitator at Phoenix as well as the

prosecutor and diversion manager from Pinetown were in agreement that FGC would be beneficial to family members as it would empower them to handle their children's issues, and enable parents and children to communicate, interact, and resolve their issues (Els, 2012:100-101).

Findings from Janse van Rensburg (cf. 2010) highlighted family reconciliation, amongst other things. Janse van Rensburg (cf. 2010) exposed 20 male offenders between 17 and 20 years old, incarcerated in Brandvlei Youth Centre, to a video and then a discussion on FGC, without actual participation in an FGC. Thirteen offenders were interviewed individually and then as part of a focus group. Participants noted that family are the most important people at FGCs due to their ability to offer support, the need for victims to hear and see that the offender is not just a bad person from people who know them, and the need for relationship restoration (Janse van Rensburg, 2010:59-61).

In addition, several offenders interviewed by Janse van Rensburg (2010:41-42) saw FGC as an opportunity to make amends for their offences, get help, accept responsibility, and allow each person involved in the offence a chance to speak. When questioned regarding the use of FGC as an alternative form of justice, some felt they gave the offender a chance to make amends and carry on with their lives and some saw them as beneficial to the offender and the community, in contrast to prison which does not benefit anyone. Others, however, saw this as an effortless way out that does not punish offenders, and some suggested a combination of restorative and retributive sentencing (Janse van Rensburg, 2010:42-44).

Songca and Karels (2016:444-445), after consideration of South African legislation, case law and environment, also suggested the use of restorative justice interventions such as FGC, running parallel to the traditional retributive approach, ideal for dealing with children who have committed sexual crimes. These authors felt that South Africa's current justice system's exclusion of the victim, and consideration of the accused as merely an offender, leaves the victim with unresolved emotions and conflict and the accused stigmatised, hated, unprepared for reintegration into society therefore more likely to re-offend. An FGC approach could be better suited, especially in cases where the victim and the offender are of the same family, as it provides healing to both

parties, restitution directly to the victim and restores social harmony (Songca & Karels, 2018:445).

Gxubane (2012a:268) emphasised that FGC is especially important in cases where offenders will be reintegrated into the same social circle as the victim. Gxubane (2016:8-10) found that 95% of youth sex offenders lived in the same neighbourhood as their victims, and 40% lived near their victims. Part of the reason offenders found reintegration challenging was because they stayed in close proximity to their victims and had not been able to reconcile with them, their family, or the community. Offenders felt that they needed acceptance from family and the community (Gxubane, 2012a:154-159; cf. Gxubane, 2018:30-31).

As with international research, effectiveness, especially with regards to accountability, reconciliation, relationship reparation, closure and forgiveness depends largely on the willingness of participants, especially victims and offenders, and families with regards to children, to partake (cf. Gxubane, 2012a).

Janse van Rensburg (2010:53-56) found that when questioned whether they would be willing to participate in an FGC, some offenders were willing stating it would give them a second chance and the opportunity to explain why they had committed the crime, and to apologise to the victim in a safe, controlled and supportive setting. FGCs were also seen as a means to make amends by being given something to do for the community, as well as a vehicle through which relationships could be restored and the offender could be accepted back into the community.

Gxubane (2012a:136-137; 2016:14) found that some of the offenders partook in FGCs and others who had not participated in an FGC expressed that they wanted to meet with their victims in order to have their own questions answered, and to clear the tension especially if they stayed in close proximity. Gxubane (2016:14) is of the opinion that participation in FGCs plays a crucial role in providing reconciliation and closure. This is further highlighted by his recording of an instance where a 'semi' FGC was convened. The offender and his parents, as well as the parents of the victim attended in the absence of the victim. The child offender expressed that he was partly pleased with the outcome even though reconciliation with the victim was not achieved. The

child offender also noted that the FGC provided the chance to talk with the victims' parents, that parties were respectful and that peace between the families was attained (Gxubane, 2012a:138). Although the 'semi' FGC was beneficial, key elements such as reconciliation were forfeited as the victim was not present.

Research often shows that participants, especially victims, are hesitant to partake in FGCs. Janse van Rensburg (2010:56-59) noted that some young offenders were opposed to the idea of FGCs as they did not see what good could come out of it or feel the need for such participation. Others felt that their history of crime would hinder people's willingness to accept that they had changed. Furthermore, shyness, the inability to express oneself, and a fear of being vulnerable, discussing feelings, and causing harm by talking before they think was raised. In his study, Gxubane (2012a:137) found that some victims and their families were willing to meet with offenders to discuss the case, others were however, uncooperative. Participants in services at the Restorative Justice Centre in Pretoria all agreed that they were offered the option of FGC, but almost all declined (Dewa, 2013:59-60).

The nature of certain crimes, the severe trauma experienced by victims, the power balances between parties, and the potential for re-victimisation, are all reasons forwarded as to why participants hesitate to be part of an FGC (Gxubane, 2016:11-12). Dewa (2013:59-60) provides that victims who knew their accused prior to the offence indicated that they were still angry at the accused as they had trusted them. Caregivers also expressed that their anger and rage towards the offender was the reason for declining FGC. Steyn (2010:113-114) also forwarded that victims may decline to participate if they are still angry. Both studies provide that there is a fear that such a meeting would result in re-victimisation (Dewa, 2013:59-60; Steyn, 2010:113-114). The mentioned reasons for declining emphasise the importance of pre-conferencing preparation to bring about healing.

Gxubane (2012a:166-167; 2016:13) found that often after adequate support and time parties are more willing to participate. Yet caution must be taken to avoid coercion with authors warning that no party should be pressured, coerced or forced to participate, and should have the right to withdraw at any time (Anderson, 2017:175; Gxubane, 2012a:166-167).

3.5.2.2 National findings regarding long-term effects of family group conferencing

There is a lack of research regarding the long-term effects of FGC in the South African context. Tshem (2009:98-116), whose research was conducted a year after the completion of the FGC, found that none of the child offenders who participated in an FGC had re-offended, however the sample consisted of only ten offenders, and thus is not generalisable. A study conducted by Gxubane (2012a:161) considered a residential diversion programme in specific, and of those who partook in the residential diversion programme, 40% re-offended. However, it was noted that parents of children who partook in an FGC as part of the residential diversion programme, acknowledged their children had not re-offended, but the majority were unsure if the FGC had affected their child's decision to refrain from crime (Gxubane, 2012a:106). Gxubane (2012a:67-68; 2016:19) specifically called attention to the fact that there is a lack of research regarding the ability of restorative justice interventions to prevent recidivism.

Research did, however, identify reintegration issues and the need for adequate follow-up and monitoring. Young offenders in the study conducted by Gxubane (2012a:154-159; cf. 2018) experienced many challenges during reintegration including self-shame and isolation due to labelling, and stigmatisation and rejection by their family, the victim and the victim's family, and the community. Some received social support and encouragement which aided reintegration, but most found reintegration to be a negative experience. Offenders felt that they needed acceptance from family and the community. Participants in the study conducted by Steyn (2010:114) found FGC too narrow to deal with the causes of crime as the child has to return to the environment that potentially caused them to become involved in criminal activities in the first place.

Follow-up and after-care after the FGC are thus vitally important, yet at times problematic and inadequate (Gxubane, 2012a:154-159; Tshem, 2009:121-124). There is a possibility that offenders may fake remorse and manipulate the situation, yet not change their behaviour after the FGC (Gxubane, 2012a:171). Steyn (2010:113-114) mentions that service providers found some child offenders to be manipulative. They pretend to change but revert to negative behaviour once in the community. Gxubane (2012a:172) recommends that youths be informed of the consequences of

their behaviour and court orders that hold them accountable be drafted. It is also necessary for parents to aid in encouraging children not to re-offend. This could be problematic as some parents defend their children and discourage accountability, and some children do not have a close relationship with their parents (Steyn, 2010:113-114).

According to Steyn (2010:113-117) it is necessary for FGC to be linked to other interventions and development programmes. Offenders should receive emotional support from family and the community, after-care services by social workers, and NGO support groups offering social support for effective reintegration (Gxubane, 2012a:154-159; cf. Gxubane, 2018). Tshem (2009:121-124) concurs and recommends that after-care services should be a part of FGC. This includes integrated services from various programmes (i.e. substance abuse, community development etc.) offered to all parties, and the collaboration of the criminal justice system and parties.

Victim support following FGC is also necessary. The grandmother involved in the FGC with her granddaughter at the Restorative Justice Centre in Pretoria (discussed above) stated that at times challenges arise that they are unable to deal with. She felt that follow-up session would further empower them but that none had been offered (Dewa, 2013:58).

3.5.2.3 National findings regarding process effects of family group conferencing

It is important to ensure that both victims and offenders are supported, treated equally, respectfully, and included in all processes and dialogue during an FGC, especially during decision making (Tshem, 2009:68). A caregiver who partook in an FGC at the Restorative Justice Centre in Pretoria expressed appreciation for being able to speak her mother tongue, as the police were unable to understand her language which had been frustrating (Dewa; 2013:57). This is line with the idea that FGCs should be conducted in a flexible, respectful, as well as culturally and language appropriate manner (Tshem, 2009:19; Zehr & Gohar, 2002:51).

Some child offenders interviewed by Gxubane (2012a:96-116) noted that they felt provided with a safe space to participate, and that their views were respected. The majority of parents also considered the conference to be fair, respectful and safe and all stated that their children liked being part of the conference as they were treated with respect, their opinions were sought, and they were allowed the chance to be part of fixing their mistakes.

Tshem's (2009:98-116) interviews with parents recorded that the majority reported that conferences were conducted with respect, empathy and in a safe environment. Although some of the child offenders felt that the presence of so many adults was intimidating, most felt that conferencing provided the chance to express their views, that they played an important role in addressing the offence, that they had not been coerced to say what their parents wanted to hear, and that they could express their feelings honestly and genuinely.

Tshem (cf. 2009) also found, however, that parents felt that it was unnecessary for children to be involved in decision-making regarding agreements, and some youths reported feeling excluded in decision-making and intimidated by parents. Gxubane (2012a:115) notes similar findings with the majority of parents in his study viewing the active participation of their children in decision-making as unnecessary as their children do not have the ability to think ahead. In addition, the majority of the child offenders noted that although their opinions were asked, they were not involved in the final decision-making about agreements (Gxubane, 2012a:95). This highlights the danger in potential power imbalances between children and adults, as discussed earlier in the international findings.

Adequate preparation and facilitation were proposed by South African research to curb potential issues (Gxubane, 2012a:268; Gxubane, 2016:16-17; Tshem, 2009:68; Steyn, 2010:115). Gxubane (2012a:138; 2016:16) feels that victim preparation is often inadequate based on his experiences as a social worker where victims were inadequately prepared, the needs of victims were ignored, painful memories were triggered, and re-traumatisation occurred. He recounts an experience with FGC between a brother and sister, whereby the brother has sexually assaulted his sister. The brother was fully prepared for the FGC; however, the sister was not prepared and

had not received any counselling. On seeing her brother, she cried uncontrollably, and the FGC had to be postponed. Once she had received counselling and preparation the FGC was convened and successful. The child offender was able to offer apology and reconcile with the victim, his sister. The mother expressed that her children had put the event behind them, and that the intervention raised some issues, such as the need for the brother and sister to have separate bedrooms (Gxubane, 2012a:139-142; 2016: 16). Steyn (2010:114-117) and Tshem (2009:68) also emphasise the necessity to ensure all parties are adequately prepared.

Furthermore, authors highlight the need for adequate facilitation and note that research in South Africa shows that there is a lack of trained professionals to facilitate conferences (Gxubane, 2012a:169-171; Gxubane, 2016:17; Steyn, 2010:115; Tshem, 2009: 124). Tshem (2009:121-122) states that the FGC process is not properly followed and attributes this to a lack of trained probation officers. Probation officers, practitioners, and social workers should be equipped with the skills to facilitate in a compassionate and respectful manner in line with the FGC process and legal principles (Gxubane, 2012a:169-171; Tshem, 2009:124).

3.5.3 A summary of international and national research findings

In summary of the above, international, and national research findings were considered based on short-term effects related to satisfaction with the justice system, accountability, closure, reconciliation, healing, forgiveness and relationship reparation and participant attendance. The long-term effects considered related to recidivism rate and reduction in expenditure, successful reintegration and honouring agreements and follow-up and monitoring. The process effects considered included respectful and fair treatment of all parties, voluntary participation, support, equal opportunity for dialogue and adequate preparation and facilitation.

Internationally short-term effects showed large support for the ability of FGC to produce satisfaction with the justice system, accountability, closure, reconciliation, healing, forgiveness, and relationship reparation. National research was limited in that studies were often outdated and/or made use of small sample sizes which negatively affects generalisability. Studies did not specifically focus on the ability of FGC to

produce satisfaction with the justice system, but findings imply that participants often did find the process satisfactory. Overall findings regarding the ability of FGC to produce accountability, reconciliation, relationship reparation, closure, healing, and forgiveness were positive, with one study (Steyn, 2010:109) specifically noting its similarity to Ubuntu (as discussed in chapter 4.2). In addition, it was noted that the combined use of both restorative and retributive justice may be beneficial.

Both international and national research stressed the importance of participation by offenders, victims, and family, especially in ensuring short-term effects/results. The majority of offenders were willing to participate but victims were often hesitant. It was noted that victims can be encouraged to participate if facilitators and justice officials are adequately trained and capable of supporting, counselling, and preparing the parties for FGC. However, participation should never be forced or coerced but should be entirely voluntary.

International long-term effects showed mixed results with some studies showing a reduction in recidivism rates and some showing no effect on recidivism rates. It was noted that time plays a factor in that FGC reduces the likelihood of re-offending short-term rather than long-term. The age factor was also found relevant with most authors noting that younger offenders were less likely than older offenders to re-offend after an FGC intervention. Almost no national research exists regarding recidivism rates, with only two studies (Gxubane, 2012a:106; Tshem, 2009:98-116) noting that offenders did not re-offend. However, both studies were small in sample size and the study conducted by Gxubane (2012a:106) could not causally link this to participation in an FGC. Therefore, more research is needed to establish the effects of FGC on recidivism.

International research recorded that offenders keep their agreements, though it is noted that samples highlighting this were small and not generalisable. It was clear, however, that fair, creative, and individualised agreements, as well as follow-up and monitoring of agreements aid in ensuring agreements are kept. National findings highlighted reintegration issues. Both international and national research recorded the importance of after-care and continued monitoring.

With regards to process effects, international and national research findings showed that proceedings were often conducted in a respectful, fair, supportive, and equal manner. However, specific cautions were raised with regards to ensuring that conferences are not too offender or too victim orientated and that a power-balance between adults and children does not arise. To counteract this, authors stressed the importance of adequate facilitation as well as preparation of all parties.

The following table provides a summary of the main findings with links to the relevant authors:

TABLE 3: SUMMARY OF INTERNATIONAL AND NATIONAL RESEARCH FINDINGS REGARDING FGC

	INTERNATIONAL FINDINGS	NATIONAL FINDINGS
SHORT-TERM EFFECTS:		
Satisfaction with the justice system	Bradshaw and Roseborough (2005:24-26); Gal and Moyal (2011: 1019); Leonard and Kenny (2011:64); Wilson et al. (2017:5-6)	Dewa (cf. 2013); Gxubane (cf. 2012a); Gxubane, (cf. 2016); Tshem (cf. 2009)
Accountability, closure, reconciliation, healing, forgiveness, and relationship reparation	Angel et al. (cf. 2014); Calhoun and Pelech (cf. 2013); Kim and Gerber's (2012: 1070-1075); Leonard and Kenny (2011: 64-69); Wilson et al. (2017: 6); Zernova (2007: 492-498)	Dewa (2013:51-59); Els, (2012:21-22); Janse van Rensburg (cf. 2010); Tshem (2009:98-116); Gxubane (2012a:iii-v); Gxubane (2016:13-14); Songca and Karels (2016:444-445); Steyn (cf. 2010)
Participant attendance	Dzur (2017: 489); Marsh and Maruna (2016:376-380); Slater et al. (2015:638)	Anderson, (2017:175); Dewa (2013:59-60); Gxubane (2012a:136-137); Gxubane (2016:14); Janse van Rensburg (2010:53-56); Steyn (2010:113-114)
LONG-TERM EFFECTS:		

Recidivism rate and reduction in expenditure	<p><i>Negative:</i> Bradshaw and Roseborough (2005:24-26); Jeong et al. (2012:380-383); Kim and Gerber (2012:1070-1071); Wilson et al. (cf. 2017)</p> <p><i>Positive:</i> Chan (2013:12-16); McGarrell and Hipple (2007: 230-238); Mongold and Edwards (2014:206-212); Payne and Weatherburn (2015:349); Wong et al. (2016 np)</p>	<p><i>Negative:</i> Gxubane (2012a:161)</p> <p><i>Positive:</i> Gxubane (2012a:106); Tshem (2009:98-116)</p>
Successful reintegration and keeping agreements	Chan (2013:12); Hayes et al. (2014:116-118); Marsh and Maruna (2016:374); Slater et al. (2015 638-639)	Gxubane (2012a:154-159); Gxubane (cf. 2018); Steyn (2010:114)
Follow up and monitoring	Slater et al. (2015:639)	Dewa (2013:58); Gxubane (2012a:154-159); Gxubane (cf. 2018); Tshem (2009:121-124); Steyn (2010:113-117)
PROCESS EFFECTS:		
Respectful and fair treatment of all parties, voluntary participation, support, and equal opportunity for dialogue	Carroll (2016:125-126); Chan (2013:8); Dzur (2017:488); Fraser (2017:185-187); Gal and Moyal (2015:1023-1029); Hayes et al. (2014:123); Leonard and Kenny (2011:64); Marsh and Maruna (2016:376-380); Zernova, 2007:492-498	Dewa (2013:57); Gxubane (2012a:96-116); Tshem's (2009: 98-116)
Adequate preparation and facilitation	Dzur (2017:488-493); Wilson et al. (2017:33)	Gxubane (cf. 2012a; Gxubane (cf. 2016); Tshem (cf. 2009); Steyn (2010:115-117)

As part of the aim of this research, the context and current and potential scope of FGC was questioned. It was thus necessary to consider the above findings and their bearings on applying FGC in the South African child-justice context. Moreover, it was useful to consider the experiences of experts, as well as their opinions and perspectives on these findings, and their impact on the application of FGC in South Africa. The next section considers research findings regarding the current application of FGC as a child justice intervention in South Africa

3.6 CURRENT APPLICATION OF FAMILY GROUP CONFERENCING IN SOUTH AFRICA

Holler (2015:25) states that it could be argued that conferencing, including FGC, is the most widely used restorative justice initiative worldwide. Yet it does not seem that this is true within the South African context. Statistics regarding restorative justice interventions used as a sentence, or for diversion will be provided, however it is unclear whether these refer to FGC or other restorative interventions such as VOM or circle sentencing. What is clear is that in general restorative justice options are not frequently implemented.

The number of restorative justice interventions handed down as sentences for children in recent years has been minor: only one in 2015/2016, three in 2016/2017 and four in 2017/2018 (Department of Justice and Constitutional Development, 2018:37)., The Department of Correctional Services (DCS) (2018:17) records that 312 sentenced children completed correctional programmes offered by DCS officials and external service providers during the fiscal year 2017/2018, of which only 36 took part in restorative justice correctional programmes (cf. Department of Correctional Services, 2018:17).

Statistics show a drop-in diversion of cases over the years. The National Prosecuting Authority (NPA) (2019:56) diverted 8121 cases in 2015/2016, 7673 in 2016/2017, 6769 in 2017/2018 and 5049 in 2018/2019 (Batley & Skelton, 2019:30). In the fiscal year end 2017/2018, only 26% of preliminary enquiries resulted in diversions (Department of Justice and Constitutional Development, 2018:24). It is unclear how

many of these diversions included restorative justice options such as FGC (Batley & Skelton, 2019:32).

NICRO and Khulisa are the two main NGO's who offer FGC, as well as other diversion and correctional services (Batley & Skelton, 2019:32-36; Hargovan, 2012:19; Khulisa, 2018:np; NICRO, 2016:np). NICRO dealt with 3778 cases that had been diverted during 2017/2018 and implemented restorative justice conferencing (FGC in NICRO) for 1571 of these cases (Batley & Skelton, 2019:34). During the 2016/2017 fiscal year NICRO handled 2321 cases of children in conflict with the law that had been diverted, and 2300 in 2015/2016. There has been an increase in the past few years, however, there is still a drop when compared to the 9295 cases diverted in 2009/2010, and 5826 in 2010/2011 (Badenhorst, 2012:11; NICRO, 2016a:5; NICRO, 2017:3). Khulisa handled 5890 cases that had been diverted in 2009/2010, 4020 in 2010/2011, and only 2065 in 2011/2012. The Restorative Justice Centre in Pretoria handled 408 cases that had been diverted in 2009/2010, and 267 in 2010/2011 (Badenhorst, 2012:11).

Section 89 of the CJA provides that One-Stop Child Justice Centres must be established and maintained. Thus, in May 2002, one was opened in Manguang, and since, two others have been opened; The Nerina One Stop Child Justice Centre in Port Elizabeth and the Matlosana One Stop Child Justice Centre in Klerkorp. All three centres are still in operation (Department of Justice and Constitutional Development, 2018:27-30; Reyneke & Reyneke, 2010:359). These centres aim to bring all role-players together under one roof to provide a professional service to children. Diversion options are offered including restorative justice practices such as VOM, sentencing circles, and FGC (Reyneke & Reyneke, 2010:359-367).

Reyneke and Reyneke (2010:373-378) measured the successfulness of restorative justice programmes offered by the Mangaung One-Stop Child Justice Centre based on Zehr's questions. Zehr and Gohar (2002:56) measure restorative justice interventions on a scale of fully restorative, mostly restorative, partially restorative, potentially restorative, and non-restorative. The following questions must be answered when determining the *restorativeness* of interventions: does the programme address harms, needs and causes; is it victim-orientated; are offenders encouraged to take responsibility; does it involve all relevant stakeholders (offender, victim and

community); does it provide the opportunity for dialogue and participatory decision-making; does it address causes; and is it respectful to all parties (Zehr & Gohar, 2002:56). VOM and FGC were the only two options found to be a fully restorative in that they could provide positive answers to all of these questions (Reyneke & Reyneke, 2010:374-376).

However, even though FGC and VOM are available at the Manguang One-Stop Child Justice Centre, they are rarely used. Less than 1% of cases involved the use of these interventions due mainly to a lack of trained staff (Reyneke & Reyneke, 2010:374).

Lack of adequately qualified and trained staff to implement restorative justice interventions is a common reason given for the lack of implementation of restorative justice interventions, including FGC. Sauls (2016:23-24) states that diversion options are often inaccessible due to probation officers, magistrates and diversion programmers lacking time due to high caseloads. In agreement, Steyn (2010:119) found that FGC facilitators are not easily accessible, and/or are limited in the number of cases they can handle due to a lack of time and resources. Badenhorst (2012:9-10) attributed the lack of diversion referrals to a staff shortage which results in a lack of services available. Schoeman and Thobane (2015:46-47) also raise this issue and highlight the need to use other professionals, such as criminologists to address the shortfall in workforce.

Many authors note that the availability of interventions that are accessible to children in conflict with the law are limited (Badenhorst, 2012:9-10; Doncabe, 2013:59; Sauls, 2016:22-26). Currently, FGC is the responsibility of the DCS, with regards to correctional and sentencing purposes, and the Department of Social Development (DSD), with regards to all levels of service delivery (Batley & Skelton, 2019:14). The NPA has been implementing alternative dispute resolution mechanisms (ADRM), including diversion and mediation, at a pre-trial stage (Batley & Skelton, 2019:37). However, there is no clarity on what the NPA means by ADRM, and it is unclear whether this involves an FGC type intervention (Batley & Skelton, 2019:37). NICRO and Khulisa are currently the main NGO's that offer FGC (Khulisa offers a programme called the Justice and Reconciliation Program (JARP) which includes dialogue

between the offender, victim and their families/support networks) (Batley & Skelton, 2019:32; Hargovan, 2012:19; Khulisa, 2018:np; NICRO, 2016:np).

These organisations, are however, reliant on funding which is often not adequately provided for (Batley & Skelton, 2019:15; Hargovan, 2012:19; Schoeman, 2014:np). The Restorative Justice Centre in Pretoria had to terminate most of their restorative justice services due to a lack of funding from the DSD (Batley & Skelton, 2019:37). NICRO had to close a large number of their offices due to a drop in government funding. Khulisa also report that they are facing challenges due to a lack of funding (Badenhorst, 2012:9-10). The DSD provides funding to some NGO's, whilst to date the DCS has not offered financial support to any external restorative justice service providers (Batley & Skelton, 2019:15).

There has been a drop in diversion referrals in the years following the implementation of the CJA, which has been named as a potential reason for the lack of implementation of restorative justice options, as well as the reason for lack of funding of restorative justice service providers (Badenhorst, 2012:13-15; Batley & Skelton, 2019:30). The sustainability of restorative justice service providers funded by the DSD is compromised in that less funding is provided as less diversions are ordered (Badenhorst, 2012:13-15). Reasons for the drop in diversion referrals are uncertain, however, it would appear that diversion referrals have decreased due to a lack of adequately trained police officials who do not have knowledge regarding the processes of dealing with child offenders, or are unwilling to follow the process for handling child offenders provided for by the CJA (Badenhorst, 2012:13-15; Batley & Skelton, 2019:30).

Professionals and the community also seem to be hesitant to accept FGC as an adequate intervention (Gxubane, 2012:110; Gxubane, 2016:11; Louw & Van Wyk, 2015:494-501). Gxubane (2016:8) recalls a lack of interest in FGC by professionals during his work as a social worker who facilitated a young sex offenders residential diversion programme. At the conclusion of the young sex offenders' residential diversion programme, prosecutors had no interest in whether or not FGCs were called, even in cases involving family members or victims who lived near to the offender. Rather they were concerned with finalising the case based on whether offenders had

completed the programme or not. The programme managers also had little regard for FGC and perceived it not to be part of the organisations service agreement or part of the social workers job within that programme. The majority of offenders and their significant others in his study noted that no FGC was convened, with the main reason being that employees at the Child and Youth Care Centers did not regard FGC as part of their job description (Gxubane, 2012a:136).

Research indicates that professionals may be wary to implement FGCs due to two reasons: the fear that it does not uphold the law and the idea that it is 'soft on crime' and society wants harsher penalties (Gxubane, 2016:11; Louw & Van Wyk, 2015:493-497; cf. Lynch, 2010; Swanzen & Harris, 2012: 20; Tsui, 2014: 653-657). Professionals raise concerns with regards to the fact that FGC could deny participants their due process rights. For instance, the right to remain silent and the right to be considered innocent until proven guilty may be denied as participation in restorative justice interventions requires an admission of guilt or at the very least an acknowledgment of responsibility which creates evidentiary issues if the matter ever goes to formal criminal trial (Swanzen & Harris, 2012:20).

Authors who favour restorative justice find concerns about due process and rights violation invalid as the nature of restorative justice moves it away from the rigid rules and legality of courts (Ward & Langlands, 2008:356). Moreover, due process rights are respected in that victims and offenders are allowed to have legal representation, and legal representatives are allowed to attend FGCs. In addition, the rights of offenders are protected because agreements are not permitted to contain any punishments that exceed that which would be imposed by a court of law, or would be degrading or humiliating (Braithwaite, 2002:566-567; Department of Justice and Constitutional Development, 2011:5).

Lynch (cf. 2010) specifically questions the ability of restorative justice to meet the needs of children. Her concerns are centred around the idea that victim inclusion is not in the best interests of the child offender, due process rights could be violated, and doubt exists as to whether children are mature enough to voluntarily make decisions or agreements, stand up for their rights, show true remorse and be reintegrated. Steyn (2010:115) adds that FGC could discriminate against certain children (i.e. street

children with no family). FGC may also lack the infrastructure and facilitation skills to meet specific needs of children with mental and physical disabilities, substance abuse and behavioural issues, and language barriers which could violate the best interest principle (Gal & Moyal, 2015:1023-1029; Schoeman & Thobane, 2015:46-47).

These concerns are valid as youths have a number of physiological, psychological, developmental, and social risks, issues and needs that may be conducive to delinquency, such as mental health problems, substance abuse, peer pressure, socio-economic issues, puberty, immature impulse resistance etc. (Buckingham, 2013:834-835; cf. Els, 2012; Richards, 2011:4; Steyn, 2010:111-112;). In addition, each child is individually unique based on numerous factors such as their age, sex, ethnicity etc. (Richards, 2011:7). Child justice interventions have the potential to go two ways. The lack of maturation or development of children means that child offenders have greater potential to change behaviour (Buckingham, 2013:829; Richards, 2011:5; Schoeman, 2010:10; Tsui, 2014:645). However, this also means that unsuitable interventions could cause harm to child offenders (Richards, 2011:5).

In response to this concern, FGC is considered an ideal intervention for child offenders as it allows for flexibility in dealing with the individual needs and circumstances of each child (Buckingham, 2013:810; Richards, 2011:6). However, it is vital that facilitators of FGC be adequately trained and prepared to deal with children and their specific issues and needs (Carroll, 2016:138; Slater et al., 2015:639).

Songca and Karels (2016:444-445) suggest the use of restorative justice interventions such as FGC, running parallel to the traditional retributive approach, ideal for dealing with children who have committed sexual crimes. The use of FGC for children who have committed sexual crimes must be based on the merits of each case, with the characteristics of the sex offender, societies reaction to sexual crime statistics, and the socio-economic and political factors of South Africa being relevant and considered to determine merit. Other authors, however, are wary of implementing FGC (Gxubane, 2016:11; Louw & Van Wyk, 2015:493-497; Tsui, 2014:653-657).

Research conducted by Louw and Van Wyk (2015:493-497) involved twenty-three South African legal professionals, including judges, magistrates, prosecutors,

advocates, and lawyers, who were interviewed about restorative justice. Some legal professionals felt that restorative justice options may be less accepted as society is discouraged by the high crime rate and wants harsher penalties. There is said to be a widespread belief that the criminal justice system must provide retribution and punishment. The public fear the results of offenders re-entering the community and thus prefer detention (Tsui, 2014:653-657). Society may consider the punitive option better for youths based on the idea that it sends a message that crime is unacceptable and taken seriously by the justice system (Gxubane, 2016:11).

In addition, restorative justice options are often considered unsuitable for violent crime. The majority of the legal professionals interviewed by Louw and Van Wyk (2015:493) found restorative justice suitable for South Africa, with some adding that it is more than suitable, but only for 'less serious' crimes such as theft and fraud (Louw & Van Wyk, 2015:494-501). Some of the young offenders involved in the study conducted by Janse van Rensburg (2010:42-44) considered restorative justice options to be an easy way out that does not actually punish offenders.

In opposition, professionals interviewed by Dzur (2017:489) noted that FGCs are suitable for serious crimes such as sexual offences, or less serious offences such as breaking into a car. In response to the high rate of violent crime (i.e. assault, rape and murder) in South Africa, Batley & Skelton (2019:3) suggest that a restorative approach may be more suitable as these crimes are often the result of relationship-based conflict and therefore need an appropriate response. Restorative justice is suggested as it considers underlying factors that contribute to an offence as well as places emphasis on relational dimensions of justice. Restorative justice programmes have shown success when used with serious crimes (Kim & Gerber, 2012:1075; Kuo et al., 2010:321). The NICRO (2017:5) client profile includes offenders who have committed property offences (37%), assault (18%), violent crimes (4%), drug related crimes (24%), driving under the influence/recklessly (12%) and other crimes (17%) who are diverted, at times with restorative justice interventions such as FGC. 98% of those diverted to NICRO do not repeat offend.

Steyn (2010:112) found that participants believed FGC is suitable for any crime type as focus is placed on the suitability of offenders (i.e. their willingness to accept

accountability etc.) rather than the offence committed. Dzur (2017:489) found that child offenders often do not want their victims to attend the FGC. Gxubane (2016:11) noted that offenders felt they would rather be incarcerated than meet their victims face-to-face and that FGC may actually be a tougher option than incarceration. This is linked to the idea of reintegrative shaming whereby the shame experienced by offenders confronted by those they have harmed creates a change within them (Braithwaite, 2000:7).

Naylor (2010:666-668) discusses research where victims of sexual offences communicated that they want retribution and punishment, but they also want the community and the offender to acknowledge the harm they have suffered and an “*unequivocal condemnation of the offence.*” Victims want their voices to be heard, to be reassured that violence will stop, an apology, compensation, and at times even reconciliation, and a sense of control and empowerment from the justice process. An FGC could provide all of the above-mentioned desires.

There is also evidence that the community may be more accepting of restorative justice than anticipated. In her study on youth perceptions of justice, Schoeman (2016:42-43) found young people accepted the need for punitive retribution but also recognised the potential of restorative justice. Participants felt that offenders can be rehabilitated and that people who are violent can stop being violent: 85% of the participants felt that offenders should apologise to their victims, and 87% felt that the victim should be given the opportunity to tell the offender how the crime impacted them, 96% recognised the necessity of community support in rehabilitating the offender, and 83% felt that the community should accept offenders back into the community.

Furthermore, statistics show that the community is somewhat willing to welcome former prisoners back into the community; 79.6% would welcome them into their church/mosque, 74.3% would welcome them back into the community, 65.8% would welcome them as a next-door neighbour, 54.8% would have them in their home for a meal, 48.5% would provide a former prisoner employment, 32.1% would start a business with a former prisoner, 31.4% would share an apartment with a former prisoner, and 22.2% would marry a former prisoner (Statistics South Africa, 2018:94).

Thus, it seems that the community is willing to be involved in aiding offenders and FGC provides them with an opportunity to support offenders and assist them in reintegrating into society (Naylor, 2010:665).

Despite some reservations regarding its suitability, FGC has been proven appropriate in most instances. Correct and proper implementation remains however a rare occurrence. Most agree that this is due to a lack of funding, resources, trained staff, and facilities. Although the CJA provides for FGC, Gxubane (2016:7-8) believes it is not a central option when dealing with children in conflict with the law and that a lot more could be done to mainstream the use of FGC. Part of the aim of this study was to consider the scope for application of FGC as a child justice intervention in South Africa. The literature confirmed that although there is scope for the use of FGCs it is rarely used.

3.7 CONCLUSION

Section 28(2) of the Constitution indicates that the best interests of a child are of *paramount importance* in all matters. Child justice interventions must consider the context, ability, and development of children. The CJA, with its incorporation of Ubuntu and restorative justice has, at least on paper, done so, although in practice there is still limited implementation of restorative justice interventions, such as FGC.

As a restorative-justice based intervention, FGC has much to offer. International and national research has shown a largely positive response to the idea as well as the success of FGC in ensuring the satisfaction of victims, offenders, and the community. Furthermore, it encourages accountability, reconciliation, relationship reparation, closure, forgiveness in a fair, equal, and respectful manner and aids in the reintegration of offenders into the community.

Some concerns have been raised by researchers such as coercion and pressure to participate, too much focus on the offender or victim, potential power-imbalances between adults and children, inadequate preparation and facilitation, and due process violations. Yet these can be overcome if adequate guidelines are created that ensure rights are upheld and processes are fair and respectful, if participants are adequately

prepared for conferences and if facilitators and other professionals involved receive the correct training.

There is a lack of implementation of FGC as a child justice intervention in South Africa. This can be attributed to a drop in diversion referrals, the hesitance of officials to accept and implement FGC, as well as a lack of funding, resources, and trained staff. In addition, a common theme that arises in research about restorative justice and FGC is that more empirical research, including qualitative and quantitative studies, is needed (Dewa, 2013:73; Gal & Moyal, 2011:1014; Gxubane, 2012a: 67-68; Hargovan, 2013:32; Steyn, 2010:5-6). Little research exists on how to develop and implement - or in other words 'apply' - successful programmes (Holler, 2015:153). Research that proves and communicates the effectiveness of restorative justice interventions, such as FGC, should be undertaken and made available to practitioners for implementation.

The above further reiterates the need for this research. The researcher aims to gain insight into the perceptions and opinions of experts working with FGC and restorative justice regarding the application of FGC in the South African child justice context. This could inform practitioners with regards to the extended scope and context for the application of FGC within the South Africa child justice.

The next chapter places both restorative justice and FGC within a theoretical framework. The researcher further considers the Afrocentricity of FGC to provide a basis for its application within South Africa.

CHAPTER 4

THEORETICAL AND PHILOSOPHICAL UNDERPINNINGS OF FAMILY GROUP CONFERENCING

*"It is to say, my humanity is caught up, is inextricably bound up, in yours.
We belong in a bundle of life"*
(Tutu, 2017:np).

4.1. INTRODUCTION

Restorative justice finds a basis in the restorative paradigm. Paradigms are ways in which people shape, define, and understand their worlds. Restorative justice as such provides a different paradigm for understanding how we react to crime (Schoeman, 2014:np). If crime is considered harmful to relationships, justice must restore these relationships and heal harms. This is achieved by including all parties involved in the crime (Schoeman, 2014:np; Zehr & Gohar, 2002:18-19). Restorative justice interventions, such as FGC, must take place in a manner cognisant of the restorative justice paradigm (Schoeman, 2014:np). Therefore, FGC cannot be separated from restorative justice when considering its' place in philosophy and theory, because the basis of FGC is rooted in the restorative justice paradigm.

Providing a philosophical and theoretical basis is necessary to ensure the validity of restorative justice as well as encourage the use of its interventions such as FGC (cf. Gavrielides, 2005). Philosophies consider fundamental truths about people, the world they live in, and their relationship to the world and other people (Florida State University, [sa]:np). Theories, on the other hand, attempt to provide an explanation for happenings, and as such, criminological theories seek to explain crime and criminal behaviour (Brown, Esbensen & Geis, 2013:150). In line with the above the research presented in this chapter will place restorative justice and its associated FGC within a philosophical and theoretical framework.

4.2 THE AFROCENTRIC PHILOSOPHICAL UNDERPINNINGS OF FAMILY GROUP CONFERENCING

Restorative justice and its interventions, such as FGC, are rooted in African philosophy and practice. In specific, restorative justice finds foundations in the African philosophy of Ubuntu. Ubuntu shapes the way African people live and identify themselves (Schoeman, 2016:33). Its main premise is the idea that “*a human being is a human being because of other human beings*” and emphasis is placed on the importance of “*being human through other people*” (Kilekamajenga, 2018:116; Mugumbate & Nyanguru, 2013:83-84).

According to the Ubuntu philosophy, the humanity of each individual interconnects with the dignity and humanity of others (Songca, 2018:87-89). Family and community are primarily important with values associated with social responsibility and ‘family over individual’ being the norm (Gxubane, 2012:101; Songca, 2018:87-8). Each child is a child of the nation, belonging to their extended family and the community, with each member of the community having a part in the raising of children (Songca, 2018:87-89; Steyn, 2010:103-104). Together, pain and success are shared, and all are obliged to help and protect each other, and to ensure family cohesion (Songca, 2018:87-89).

Traditional justice governed using the tenets of the philosophy of Ubuntu. Crime was considered a conflict between people that harmed relationships and affected the entire extended family and community. The wrong was not only owned by the victim but by the community as well (Gxubane, 2012:101, Songca, 2018:83-89; Steyn, 2010:102). Justice aimed to heal the harm and restore victims, the community, and the offender (Kilekamajenga, 2018:152-153; Gxubane, 2012:101-108; Songca, 2018:87-89).

Collective responsibility was key. A crime affected the whole community and was the responsibility of the whole community to collectively identify, resolve and intervene (Kilekamajenga, 2018:152-153; Songca, 2018:87-89). Focus was placed on restoration, restitution, accountability, compensation, and relationship reparation (Kilekamajenga, 2018:152-153; Gxubane, 2012:101-108; Songca, 2018:87-89). Ubuntu acknowledged that victims would need assistance, thus community became a

support system (Gxubane, 2012:108). Offenders were not condemned and rejected but rather social harmony trumped punishment and offenders were encouraged to accept responsibility, reconcile with the victim and community, and then remain a part of the community (Kilekamajenga, 2018:152-153; Schoeman, 2013:299-300; Songca, 2018:87-89).

The restorative justice paradigm finds connectivity with the philosophy of Ubuntu. Each consider crime as harmful to relationships (Gxubane, 2012:101; Schoeman, 2014:np; Songca, 2018:83-89; Steyn, 2010:102). Both restorative justice and Ubuntu acknowledge the interconnectedness of individuals and the community, and therefore aim for community centred conflict resolution. Meeting the needs of individuals is inclusive - if one is harmed all are harmed (Gxubane, 2012:101; Kilekamajenga, 2018:31-32; Schoeman, 2014:np; Zehr & Gohar, 2002:17-18). Thus, maintaining positive relations is a collective responsibility and conflict resolution belongs to the entire community. Harm persists until the relationship, peace, and social harmony it destroyed is restored (Schoeman, 2014: np; Songca, 2018:89).

Restorative justice and Ubuntu are both interactive and democratic and provide opportunities for dialogue that uphold the dignity and human rights of individuals. Both uphold the values of respect, honesty, humility, mutual care, accountability, and trust and are inclusive, flexible, transformative, and restorative. Support, guidance, and healing are offered to both systems. The offender is offered guidance and healing rather than being cast out. Victims are central to the process and their need for information, validation, truth telling, apology, social support and vindication are met (Kilekamajenga, 2018:31-32; Murhula et al., 2019:31; Schoeman, 2013:301-302; Songca, 2018:92).

As a restorative justice intervention, FGC, finds place within African traditional justice practices governed by the philosophy of Ubuntu. The term 'FGC' may have been created in New Zealand, yet the concept has existed in African traditional practice long before the term came into existence (Songca & Karels, 2016:454-455). The FGC process is similar to the African dispute resolution practice of Lekgotla which involved the gathering of the victim, offender, their families, and community members by the traditional leader to resolve a conflict (Gxubane, 2012: 108; Schoeman, 2014:np). The

process required the victim and offender, represented by elders from their clan, to state their case. Each speaker was given equal chance to talk until agreement or group cohesion was reached. The elders then provided a resolution (Schoeman, 2013:302-303). FGC also gathers the victim and offender, their family and friends, and other supporters together to discuss the crime and develop a resolution (Schoeman, 2014:np).

According to Gxubane (2018:6), there is clear similarity between African justice, with Ubuntu at its roots, and the intervention of FGC. Participants interviewed by Steyn (2010:109) found justification for the use of FGC based on its similarity to traditional methods of conflict resolution based on Ubuntu. Sloth-Nielsen and Gallinetti (2011:79) believe that options such as FGC, which involve collective dialogue between offenders, victims, family, and community; show communitarian values indicative of Ubuntu.

FGC mirrors the Ubuntu philosophy and traditional African justice practices in that it also attempts to heal the harm caused by the offence and includes family and community in doing so (Schoeman, 2014:np; cf. Zehr & Gohar, 2002). Offenders are encouraged to own responsibility for their actions, and to make restitution to the victim. Community is involved in reintegrating the offender into it and in supporting offenders and victims (Schoeman, 2014:np; cf. Zehr & Gohar, 2002).

A professional interviewed by Dzur (2017:494) noted that FGC works better in New Zealand than it does in Britain and attributed this to population difference, with Britain having a bigger more disconnected population. He felt that New Zealand has access and defines family in a broader manner – it includes great aunts, close friends, and extended family. In addition, FGC is so entrenched in the law that it is well known and understood by majority of the population. Songca (2018:87-89) notes that Ubuntu embraces extended family and community as their own, with group solidarity and collective responsibility of high importance. Although FGC is not yet well known, the principles of Ubuntu are still embraced, embodied, and practiced by a large majority of South Africans. Ubuntu is still a part of life for many Africans, and thus an Africanised justice system is important (Songca, 2018:88). Thus, it would stand to reason that FGC would be an ideal intervention in the South African context.

Tauri (cf. 2015) discusses how FGC has been praised as a method that reduces crime through community care and holding children in conflict with the law accountable, and that it is applicable to all cultures and ethnic groups as it is rooted in tradition. However, he cautions that programmes are often implemented without consultation with the communities within which they will be practiced, and without consideration for the roots of these practices, as well as cultural and social needs. Although authors (Braithwaite, 2002:564-565; Louw & Van Wyk, 2015:498-499; Zernova, 2007:506) feel that a standard set of guidelines for implementation, facilitation and monitoring of FGC should be drawn-up, they also raise caution over the possibility that set standards may shift power away from the people and back to the state. There is potential for restorative interventions, including FGC, to be standardised according to Western ideas of 'best practice', and in return the ideals of restorative justice could become compromised (Braithwaite, 2002:564-565; Louw & Van Wyk, 2015:498-499; Zernova, 2007:506).

Although largely positive as shown above, international research indicates that, in some instances, Western ideology has affected practice. Zernova (2007:505) found that the degree to which both victims and offenders were empowered was restricted. Rather, the criminal justice system remained in power whilst giving the illusion that participants were involved. Many Māori and Whānau people involved in FGC in New Zealand - where FGC originates - experienced FGCs as 'enforced based,' culturally inappropriate and disempowering (Moyle & Tauri, 2015:91). Wong et al. (2016:1323) found that programmes aimed at predominately Caucasian samples showed a significant impact on offenders, whilst the same was not true for more Ethnic samples. They propose that this may be due to programmes being better suited and geared towards the needs of Caucasians rather than Ethnic individuals.

Standards that disempower indigenous practices or people, or that are so prescriptive that they inhibit innovation should be avoided (Braithwaite, 2002:564-565). For FGC to be culturally responsive and empowering it must be inclusive and reflective of the needs and cultures of the community within which it takes place (Moyle & Tauri, 2015:101). Standards that provide space for community delivery, development, and evaluation, as well as cultural diversity and innovation, yet which still ensure that bad

practice is disallowed should be created (Braithwaite, 2002:564-565; Moyle & Tauri, 2015:101).

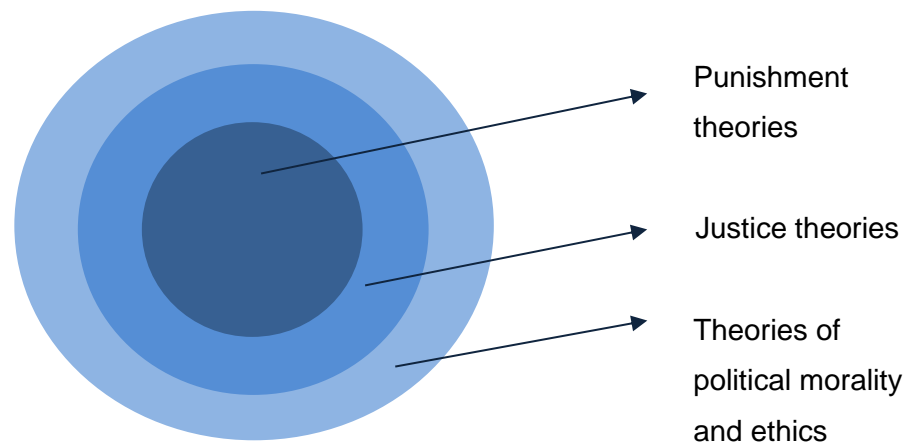
It would seem from the above research, and the fact that it is included in the CJA, that restorative justice, and in specific FGC, upholds, embraces, and reflects Afrocentricity in its similarity to the African justice process rooted in the Ubuntu philosophy. In addition, restorative justice initiatives can be tailor-made to suit a community context and their acknowledgement of shared humanity allows participants to transcend cultural differences (Schoeman, 2016:36-37; Tsui, 2014:664). Yet it would be unwise not to heed the above caution – that it is necessary to ensure that family group interventions truly do reflect the culture of the community in which they take place and that the community is in fact empowered.

In addition to considering the philosophical underpinnings of restorative justice, it is important to consider where it fits theoretically (Gavrielides, 2005:84-87). Interventions must be rooted in relevant theory regarding behavioural change and crime causation. Thus, the theoretical basis of FGC must be determined (Steyn, 2010:167).

4.3 THE THEORETICAL UNDERPINNINGS OF FAMILY GROUP CONFERENCING

Gavrielides (2005:84-87) questioned where restorative justice fits within the ‘world of theories.’ He presented a diagram with three layers of theory, as follows:

DIAGRAM 1: WORLD OF THEORIES



The first broad and outer circle encompasses theories relevant to political morality (relationships between an individual and aggregation) and ethics (how we conduct our lives), such as liberalism, utilitarianism, communitarianism, feminism, or republicanism. The second middle circle includes theories focused on all aspects and issue relevant to the justice system, such as the Republican Theory of Dominion. The last circle, the smallest one in the centre of the diagram refers to punishment theories, such as just deserts theory or retributivism, whereby specific issues within different disciplines are dealt with (Gavrielides, 2005:87-88).

Restorative justice is not broad enough to address politics and ethics but is broader than a punishment theory. It thus falls into the middle circle as it is able to address all aspects and issues within the justice system as a whole (Gavrielides, 2005:87-88). Schoeman (2014:np) summarises by stating that restorative justice is relevant in all sectors of the justice system, including police, courts, judiciary, and corrections, and can address justice issues such as victim support and crime prevention. Overall, Gavrielides (2005:94) concludes that restorative justice fits into practice and theory and therefore, does indeed fit into the 'world of theories' within the justice theory section.

FGC is an intervention that could be considered a practice of the restorative justice 'theory.' FGC is rooted in the discipline theories of reintegrative shaming and Social Control Theory (Braithwaite, 2000:15-16). Restorative justice itself resonates with both

these theories (Braithwaite, 2000:9-16), however as the focus of this study is FGC, this chapter will consider reintegrative shaming and Social Control Theory as they relate to FGC.

4.3.1 Reintegrative shaming theory

According to Kim and Gerber (2012:1077), the theory of reintegrative shaming is one of the most influential criminological theories as it motivates for interventions that are alternative to incarceration, but which reduce re-offending through the communication of shame. Braithwaite's theory of reintegrative shaming suggests that if a society communicates shame regarding crime, whilst still respecting the offender and attempting to reintegrate them into law abiding society, the crime rate will decrease (Braithwaite, 2000:1-2).

Restorative justice is often linked to the theory of reintegrative shaming, with Lilly, Cullen and Ball (2015:np) stating that Braithwaite's theory provides intellectual justification for restorative justice, as both aim to find ways of reintegrating the offender into the community after being shamed. Braithwaite (2000:15-16) himself predicts that restorative justice interventions, such as FGC, are more effective in reducing crime than criminal trials because shame is communicated through the victim and their supporters, family and friends, and through conversation regarding the harms of the crime.

Where Western belief relies on the idea that fear of punishment ensures deterrence from crime, Braithwaite's (2000:6-7) theory of reintegrative shaming posits that people refrain from crime due to early exposure to the shamefulness of it, rather than the punishment attached to the crime. For example, most people refrain from murder due to their moral beliefs, not because they fear punishment. Thus, when a crime is committed, Braithwaite (1989:73) is of the opinion that rather than punishment, shaming should commence, and only when shaming fails is punishment necessary.

Shaming consists of informing an offender of a specific individual's, communities and/or societies disapproval of their crime in a respectful manner that reaffirms their morality as well as welcomes reintegration (cf. Braithwaite, 1989). Shaming creates

an interconnectedness that, although painful, rejects stigmatisation and creates a positive relationship and then reintegration which in turn controls crime. Furthermore, shaming attempts to attract citizens to the morality of the rule of law, to coax them to obey the law and to reason with them about the harmfulness of crime (Braithwaite, 1989:7-10).

Incorrect or 'disintegrative shaming' can be counter-productive and will increase crime. Disintegrative shaming also involves expressed disapproval for the offence but there is no effort to reintegrate the shamed offender back into the community and the offender remains an outcast with the title 'offender' (Braithwaite, 1989:101). Westernised criminal justice shaming is disintegrative and generally results in stigmatisation, with the offender being labelled a 'bad person' and as such suffering disrespect. The stigma attached to being labelled a 'criminal' can destroy relationships between the offender and their family and peers. Isolating one from those affected by the offence denies them the chance to comprehend the harm caused and to own accountability for it (Calhoun & Pelech, 2010:289; Gxubane, 2012a:62). Reintegrative shaming rather disapproves of offending yet is respectful and forgiving of the offender as a person who is inherently good but who has made an unwise decision (Braithwaite, 2000:1).

Shaming can be explained within the context of family and is based on moral reasoning similar to that seen in the family setting during socialisation of children (Braithwaite, 1989:56-74; Schoeman, 2014:np). Parents inform their children in a non-judgemental empathetic manner of acceptable and unacceptable behaviour when interacting with society, which shapes the child's value system and promotes pro-social behaviour (Schoeman, 2014:np). Misbehaviour is shamed, and the child is punished; however, the child is not the only one in the family to be punished and it does not change the child's status to 'criminal child' (Braithwaite, 1989:56-74). When a family uses punishment that is disintegrative it will fail at socialising the child as is shown in research whereby lenient or punitively authoritarian parenting styles are linked to misbehaviour; yet misbehaviour is less likely when parents confront misbehaviour with moral reasoning (Braithwaite, 1989:56-74; Schoeman, 2014:np).

The FGC process incorporates the idea of reintegrative shaming. Offenders are shamed through dialogue with their victim and their family and informed that their behaviour is unacceptable to society, a specific individual (i.e. the victim or their family), and community and encouraged to own accountability in a respectful and empathetic manner (Buckingham, 2013:858-859; Gxubane, 2016:1; Holler, 2015:106-107; Naylor, 2010:678; Zehr & Gohar, 2002:22). Hearing the victim's side of the story also ensures offenders are confronted with the harmfulness of their actions which creates repentance, empathy, apology, and remorse (Buckingham, 2013:858-859, Holler, 2015:106-107). In addition, offenders are viewed as inherently good and aided in meeting their needs and reintegrating so that they may avoid re-offending (Connolly, 2010:374; cf. Holler, 2015).

Research has found that shaming is more effective when delivered by individuals in one's immediate support system as opposed to law enforcement, the media, and the broader community (Lilly et al., 2015:np; Schoeman, 2014:np). Shame delivered by a judge will be less effective as the judge has not earned respect or built a relationship with the accused. However, if friends and family shame behaviour, an individual is more likely to respond because they love and respect these people, and the shaming will most likely be delivered in a loving and respectful manner (Braithwaite, 2000:7). Community involvement is also important, and the community participates in actively shaming the offender and then assists in reintegrating the offender into a law-abiding community (Braithwaite, 1989:7-10).

FGC acknowledges the necessity of including family and community in the intervention. The family and community of both the victim and offender are included in the FGC and encouraged to support and assist the offender, whilst at the same time experiencing support and assistance (Braithwaite, 2000:14; Gxubane, 2016:1; Schoeman, 2014:np; Umbreit et al., 2007:33). Values within the reintegrative shaming theory, and within FGC, include healing rather than hurting, dialogue that is respectful, making amends, a community that participates and cares, taking responsibility, remorse, apology, and forgiveness (Braithwaite, 2000:14).

Japan is often given as an example of a country that implements justice in a manner consistent with reintegrative shaming. Based on its demographics, its fast rate of

modernity and its highly urbanised cities, Japan should have a high crime rate. Rather, it has an exceptionally low crime rate and is the only country to show a drop in crime rates over the past half century (Braithwaite, 2000:2-3). Braithwaite (1989:61-65) attributes this to its justice approach which expects offenders to accept the community's terms rather than follow a Western style criminal justice approach. Reintegrative shaming is characteristic of the Japanese system and shame is born collectively by the family, company, or school etc. of the offender. Families or community volunteers also take responsibility for reintegrating the convicted offender and apology and ceremonies of restoration which indicate the restoration of harmony between conflicting parties, are fundamental. Prosecution only happens in major cases or minor cases where the normal process of apology, compensation and forgiveness by the victim is unsuccessful (Lilly et al., 2015: np).

In addition to its correlation to the reintegrative shaming approach, the Japanese approach has some similarity to the traditional African approach. Traditional African justice was based on Ubuntu, which considers family key in addressing behaviour. Family and community encourage accountability, apology and healing, own responsibility for each other, assist the offender to reintegrate into the community and focus on restoring relationships and social harmony (Kilekamajenga, 2018:152-153; Gxubane, 2012:101-108; Songca, 2018:87-89).

The next theory in which FGC finds its foundation, is the Social Control Theory. Braithwaite (2000:9) also links reintegrative shaming to Social Control Theory in that an individual with strong attachments to parents or other agents of conventional morality, are more likely to desist from crime due to their continued belief in the law-abiding morals and rules taught by those people.

4.3.2 Social Control Theory

Travis Hirschi's work led to one of the leading 'social control theories' known as 'social bond theory' or 'social control theory' (Brown et al., 2013:341-343). Hirschi (2002:34) proposes that the question is not 'why do people commit crime' but rather 'why don't people commit crime.' In answer Hirschi (2002:16) states that people avoid crime because of their ties to the norms of society and that a broken or weak bond with

society is causative of criminal behaviour. The basic premise is that if left alone people will pursue personal interests rather than societal ones. However, if people are nurtured and included in society, they will conform to its norms (Brown et al., 2013:334-335). Conformity results from socialisation, whereby people form bonds with society. Weak or broken social bonds lead to delinquency (Brown et al., 2013:334-335; Wiatrowski, Griswold & Roberts, 1981:525).

Restorative justice, and its intervention in the form of FGC, considers crime the result of a conflict or break in social relationships (Schoeman, 2014:np). This is in line with the Social Control Theory where weak and broken social bonds with family and community leads to delinquency (Brown et al., 2013:335; Hirschi, 2002:16). Furthermore, FGC includes the family and community of the victim and offender in resolving the conflict and ensuring the young offender does not re-offend (Els, 2012:74). Social Control Theory posits that strong social bonds with family and community, and positive socialisation of an individual, ties them to the norms and values of a law-abiding society (Brown et al., 2013:334-335). Hirschi (2002:17-23) developed four elements of a social bond that tie a person to society and its norms, namely attachment, commitment, involvement, and belief, thus preventing them from engaging in criminal behaviour (Brown et al., 2013:342-343).

Attachment refers to a child's socialisation and bond with their significant others as well as their bond and internalisation of the norms and beliefs of their society and significant others (Brown et al., 2013:342-343; Hirschi, 2002:18). Violation of societal norms generally results in deviant behaviour (Hirschi, 2002:18). Children generally form this attachment with their family as it is family that models and teaches socially acceptable behaviour (Wiatrowski et al., 1981:525). Parents inform their children in a non-judgemental and empathetic manner of acceptable and unacceptable behaviour when interacting with society. This socialises the child, shapes their value system and promotes pro-social behaviour (Schoeman, 2014:np). Development is largely based on family as its primary source, and societies and communities are built on families. Strong, stable, supportive families positively influence children and control misbehaviour (Els, 2012:46).

FGC acknowledges the attachment between individuals and their family and community. It attempts to reconcile the broken bond between an offender and their families and community, as well as with the victim (Gxubane, 2016:7) by placing control and responsibility into the hands of the family and community of both victims and offenders, who then assist parties in dialogue and decision-making to achieve reconciliation, healing and restoration (Els, 2012:74; Steyn, 2010:112). Offenders are held accountable by family and the community who communicate care and offer support, encouragement, and skills to develop the offender (Buckingham, 2013:859; Els, 2012:74). This is especially effective because of the bond between the offender and their family or community (Els, 2012:8-9; Gxubane, 2016:7). Victims are also given the chance to express their feelings and experience healing with the aid of family and the community with whom they have a social bond. The family itself is allowed to deal with the offence, experience healing, and prevent recidivism (Els, 2012:74).

Parental support aids youths to better handle stress and conflict, to deal with peer pressure, and ensures the child feels loved, valued, and accepted (Els, 2012:96). Research suggests that family relationships and parental involvement have a positive influence on rehabilitation, assists in ensuring accountability, leads to lower behavioural issues, reduces recidivism, provides youths with much needed emotional support and belonging, and aids in community reintegration (Walker et al., 2015:413).

Commitment refers to the norm and conformity, whereby children will avoid criminal behaviour if they are committed to a goal (i.e. to have a career, qualification, reputation etc.) which could be hindered by imprisonment or the attainment of a criminal record (Brown et al., 2013:342-343; Hirschi, 2002:20). FGC makes children aware that having a criminal record will negatively impact their future career and education choices (Steyn, 2010:112). Section 51 of the CJA provides that an aim of diversion, with FGC as an option, is to prevent children from receiving a criminal record and to promote the development of the child. Offenders are provided the chance to develop pro-social skills, cognitive skills, behavioural change, and self-control as well as gain education and counselling to assist them in avoiding future offending (Holler, 2015:119-120; Steyn, 2010:167). Section 53(3) of the CJA provides for the inclusion of educational, socialisation, therapeutic or other interventions that can assist young people in committing to a law-abiding life.

Involvement refers to participation in conventional activities. If a child is kept busy with conventional activities, their opportunity, time, and energy to commit a crime is limited (Brown et al., 2013:342-343; Hirschi, 2002:21). In this regard, FGC may include as part of the agreement any options mentioned in section 53(3) of the CJA. Conventional activities included in this list that could ensure a child remains active and avoids criminal activity, and which promotes their social status include: compulsory school attendance, order for family time or peer association, counselling or therapy, attendance at a specified vocational, educational or therapeutic service, community service and the provision of a service to the victim or a community, charity or welfare organisation.

Belief refers to the acceptance of common social norms and values by an individual as valid. The more someone believes in the norms and values of society, the less likely they are to offend (Brown et al., 2013:342-343; Hirschi, 2002:23). Belief in and conformity to norms and values results from socialisation (Wiatrowski et al., 1981:525). Socialisation is mostly achieved through family, who teach children pro-social norms and behaviours, and thus instil a belief in them to own and maintain these norms and behaviours (Schoeman, 2014:np). One of the core processes of FGC is the communication of moral values, with the involvement of family and the community, to ensure children avoid future offending (Presser & Van Voorhis, 2002:164-167; Walker et al., 2015:414).

In summary, the restorative intervention of FGC finds basis in the theory of reintegrative shaming, whereby shaming offenders in a respectful and reintegrative manner prevents crime. FGC does this through holding child offenders accountable in a manner that is respectful of their integrity, as well as encouraging and supportive of their reintegration into society. FGC is also justified based on the tenets of Social Control Theory which considers strong social bonds based on attachment, commitment, involvement in activities and belief in societal norms, a crime deterrent. FGC provides support through family and community inclusion, as well as the provision of services that allow children in conflict with the law to learn what is acceptable and normalised within society, and then become immersed in that society. Thus, they are able to avoid recidivism.

4.4 CONCLUSION

Based on the above, it would appear that FGC finds foundation in Braithwaite's Reintegrative Shaming Theory and Hirschi's Social Control Theory. In addition, the restorative justice paradigm, with FGC as one of its interventions, is firmly rooted in the Afrocentric philosophy of Ubuntu and traditional African justice practices.

Caution must however be exercised with regards to ensuring that interventions are in fact in-line with the community and culture. As part of the aim of this research, experts on FGC and restorative justice were interviewed regarding the suitability of FGC in an Afrocentric context. Some of these experts are of African culture or have worked or still work within various cultural and social communities and are therefore, able to provide more insight into its suitability for application within an African (and South African) child justice context.

CHAPTER 5

METHODOLOGICAL OUTLAY OF THE STUDY

5.1 INTRODUCTION

Research refers to the process whereby questions regarding phenomena may be answered through the collection and understanding of information (Kumar, 2019:34). The process of research is based on methods that have been proven both reliable and valid (Kumar, 2019:34). The methodological outlay of the study provides an account of the methods used by a researcher to conduct their research, as well as the justifications and limitations of those methods (Hall, 2018:163).

The following chapter considers the research methodology applied within this study as well as the reasons for using the specific methodology. The research methodology is discussed with focus on the purpose, goal, and approach of the research. The unit of analysis, as well as sampling design is provided followed by a discussion of the data collection and analysis approach taken in this research. Lastly the validity and reliability, as well ethical considerations applicable are presented.

5.2 RESEARCH METHODOLOGY

Research methodology refers to the manner in which the research will be conducted, the decisions made, and the procedures followed by the researcher in conducting the study. Justifications for these decisions and procedures, as well as research limitations are also provided (Blaikie, 2010:15; Bows, 2018:94; de Vos et al., 2011:109; Hall, 2018:163). The steps a researcher will follow in attempting to answer the research questions are presented with such clarity that were another researcher to replicate the study, the exact procedure would be available for him/her to do (de Vos, 2011:109). The research methodology chapter commences with discourse on the research purpose, goal, and approach, followed by discussion of the unit of analysis and sampling design.

5.2.1 Research purpose and goal

The purpose of research, whether basic or applied research, provides clarification with regards to the function of the research. The function of basic research is to add to the knowledge base of a discipline, to increase knowledge on specific phenomena which may or may not have practical application, or to answer theoretical problems (de Vos et al., 2011:94; Kumar, 2019:34). The purpose of this study was to add to the knowledge base regarding the application of FGC as a child justice intervention within South Africa. Hence the research purpose for the study was basic in nature.

Basic research and applied research often overlap in practice with the findings of basic research providing practical recommendations, and the findings of applied research adding knowledge to the discipline (de Vos et al., 2011:95). The knowledge attained in this study was further used to provide recommendations, thus it overlaps with applied research. However, the primary purpose was knowledge development in a field of study with limited available and current research.

In order to determine the specific action and focus of the research, the goal of research is determined, namely whether research attempts to explore, explain, describe or evaluate phenomena (Blaikie, 2010:70-71; Bows, 2018:94-95; de Vos et al., 2011:95). The aim of this study, to explore the application of FGC as a child justice intervention within South Africa, highlights that the goal of the research is exploratory.

Exploratory research aims to research a topic or phenomenon that is mostly unknown, and to provide initial insight into the phenomenon or issue (Bows, 2018:94). As mentioned previously, the application of FGC as a child justice intervention in South Africa is an under-researched area since limited research is available on this topic. Exploratory research further answers the question ‘what is going on?’ (Blaikie, 2010:70). This study actively focused on ‘what is going on’ with the application of FGC in South Africa for children in conflict with the law.

5.2.2 Research approach

A qualitative approach was followed in the study. As discussed in the previous section, the goal of this research was exploratory, and in this regard, a qualitative approach is usually followed (de Vos et al., 2011:96). The qualitative approach considers the opinions, perspectives, feelings and experiences of people and attempts to answer questions regarding the context of phenomena and to understand and describe it based on the perception of the participants, rather than the researcher (Bows, 2018:96; de Vos et al., 2011:64-65). A qualitative approach was therefore applicable as this study sought to understand the application of FGC as a child justice intervention in South Africa based on the perceptions, experiences, opinions, and knowledge of experts in the field of FGC and restorative justice.

Semi-structured interviews are commonly used to collect data for a qualitative study (Bows, 2018:100). Findings are presented narratively rather than numerically (Blaikie, 2010:70; de Vos et al., 2011:64-65). Aligned to the qualitative approach, the study made use of semi-structured interviews for data collection and findings were presented narratively.

5.2.3 Unit of analysis and sampling strategy

The unit of analysis describes where data will be collected from (de Vos et al., 2011:93). The unit of analysis in this study included subject experts and professionals from NGO's, academia, private practice, and the criminal justice system who have knowledge and experience of FGC and restorative justice. Experts in the fields of restorative justice and FGC were chosen as the unit of analysis as they can supply information based on their knowledge and experience of working within the child justice sector.

The sample for this study consisted of 12 subject experts and included one participant who had qualification in criminology and social work, one criminologist, four social workers, two doctors in law, one ex-magistrate currently involved in ADR mediation, one ex-chief prosecutor currently involved in ADR mediation, one educationist, and one clinical psychologist. Biographical information regarding the research sample is provided in tabular form in section 6.2.

Non-probability sampling was used in the study. Non-probability sampling is non-random, allows for the sample to be chosen based on pre-defined characteristics, and the sample is not generalisable to the entire population (Davies & Francis, 2018:530). Non-probability sampling was applicable because participants were actively recruited based on their expert knowledge regarding restorative justice and/or FGC.

Purposive and snowball sampling were employed in the study. Purposive sampling allows for the sample to be selected based on the researcher's judgement, and the samples unique position and characteristics suited to the study (Davies & Francis, 2018:530; de Vos et al., 2011:232; Bachman & Schutt, 2014:119). Purposive sampling was firstly used to identify the research population through the perusal of research articles and academic sites (ResearchGate). In addition, the researcher contacted NGO's (NICRO and Khulisa Social Solutions) and universities to assist with the identification of potential research participants. Potential participants were then contacted and invited to participate in the study through academic site messaging portals, or via their contact details provided by NGO's and/or university websites. As a result, seven participants agreed to participate in the study.

Snowball sampling was then used to recruit additional participants. Snowball sampling involves the recruitment of participants through referral from other participants and is often used in cases where it is difficult to identify the sample, or where the researcher has limited access to the sample (Davies & Francis, 2018:520; de Vos et al., 2011:233). The participants who agreed to participate in the study were asked during interviews to identify additional subject experts. These persons were contacted and also invited to participate in the study. Subsequently, five more participants were recruited.

The process continued until data saturation was achieved. Saturation is reached when no additional data can be gathered as the data collection process produces no new information (Bachman & Schutt, 2014:467; Blaikie, 2010:143). Saunders, Sim, Kingstone, Baker, Wakefield, Bartlam, Burroughs and Jinks (2018:1896) further expound in defining saturation based on the context of the study. For the purpose of this study an inductive thematic saturation model was followed whereby data was

collected and analysed until a repeat in themes was noticed and no new themes emerged (Saunders et al., 2018:1900).

All participants were requested to read and sign an informed consent document ([Annexure A](#)) prior the interviews. Permission was also obtained to audio record the interviews, to which all participants agreed. Participants were furthermore offered the choice to remain anonymous or to waive their right to anonymity. Pseudonyms were used for participants who chose to remain anonymous whilst those who waived their right to anonymity are named within the presentation of findings.

5.3 DATA COLLECTION

Semi-structured interviews were conducted either face-to-face, via video call, or telephonically. Semi-structured interviews allow the researcher to make use of an interview schedule which contains key areas and questions to be asked but ensures flexibility in that the researcher may also explore new ideas and themes that arise during the interview (Davies & Francis, 2018:531). An interview schedule ([Annexure B](#)) was followed in this research, however the researcher explored new themes that were discussed by participants. The interviews lasted one to two hours and were audio recorded. In addition to the audio recordings, the researcher also used field notes to capture data.

Although a formal pilot study was not conducted, the first interview with Mr Mike Batley was used as a pre-test of the semi-structured interview schedule in order to make modifications thereby improving the quality thereof. He was chosen because of his extensive knowledge and experience within the field of restorative justice. The interview with Mr Batley therefore served as a 'dress rehearsal' for data collection in the study (de Vos et al., 2011:73). It furthermore assisted with estimating the time interviews will take and to pre-empt potential problems that may arise during the actual interviews (de Vos et al., 2011:395).

Due to the lack of available experts in the study field, Mr Mike Batley's interview formed part of the data collected for the study. According to de Vos et al., (2011:74) it is acceptable to test the interview schedule on some of the participants if limited

participants are available from which to draw a sample (de Vos et al., 2011:74). Mr Batley was informed at the start of the interview that the interview would also serve as a pre-test study and whether he would provide feedback and advice on the interview schedule as well as the researcher's performance. Mr M Batley was satisfied with both and requested no changes; thus, the interview schedule was considered suitable to use for data collection. Furthermore, in finalisation of the interview, all participants were asked if they had anything else to add that was not covered in the interview questions, but that would add value to the study. This allowed for knowledge and themes not yet explored but of value to the topic to be discussed.

5.4 DATA ANALYSIS

Qualitative data analysis involves bringing meaning, order, and structure; making sense of; and identifying emerging patterns and themes out of the wealth of data collected (Creswell, 2014:57; de Vos et al., 2011:397-399). The steps proposed by Creswell (2014:245) were followed to analyse data for purposes of this study. Although the data analysis process is explained in a structured manner, it is rarely linear, meaning that the steps followed during data analysis interact, interrelate, overlap and take place in various order which was apparent in the data analysis process of this research as will be expressed in the following discussion (de Vos et al., 2011:403; Creswell, 2014:247).

The first step proposed by Creswell (2014:247) involves organising and preparing the data for analysis. This involved the transcription of interviews, typing up and scanning of field notes, and generally cataloguing and arranging data. Interviews were transcribed into individual WORD documents named after participants and saved in a folder. Participants who wished to remain anonymous were given a pseudonym. The researcher then re-listened to recordings whilst reading transcripts to validate that the transcribed data were accurate.

Step two and three were undertaken simultaneously. Step two involves repeated reading, perusing, or listening to data in an attempt to reflect on its meaning, and to gain an overall sense of the data (Creswell, 2014:247; de Vos et al., 2011:409). Step three starts the coding process, whereby data is separated into distinct categories

based on prominent or recurring ideas. These are then given specific code words or labels (Creswell 2014:247-248; de Vos et al., 2011:410-411). Types of codes the researcher should be mindful of during this process include those that were expected due to the literature review and common sense; unexpected codes; and codes that are unusual but theoretically valid (Creswell, 2014:248).

During stage two and three, the researcher read the transcripts and at times listened to the recordings. The researcher identified themes and separated participant quotes and dialogue under different headings in a separate WORD document. Headings were created based on the questions asked as well as through identification of additional themes that were of interest to the study.

The fourth stage involves developing a general description of themes based on the coding process that represent the major findings of the research. This in turn provides for the formation of headings to be used during presentation. During this stage, the researcher also notes evidence and quotes from diverse sources and participants (Creswell, 2014:249; de Vos et al., 2011:416). These headings are then, as part of step five, presented as findings. Qualitative research is usually presented narratively (Creswell, 2014:249).

The fourth and fifth steps were also conducted simultaneously as this worked best for the researcher. The themes identified in the previous step were grouped together under broad headings and then divided into relevant sub-headings. Findings were then analysed and discussed under the appropriate corresponding heading. Verbatim quotes (unedited) from participant interviews that were pertinent to the respective themes were included to substantiate and validate the findings. Findings from the study were compared to information from the literature review to identify similarities and differences.

The last step involves a discussion of what was learnt as a result of the findings, and what recommendations or calls to action were identified as a result of the research (Creswell, 2014:249). During the conclusion and recommendations stage, the researcher presented conclusions from the findings from the study. Lastly, recommendations were made whereby the researcher proposed specific areas for advocacy, action steps, and future research.

5.5 VALIDITY AND RELIABILITY

When assessing the quality of qualitative research, validity and reliability must be considered. Validity in qualitative research ensures that the findings are accurate whilst reliability refers to the trustworthiness of the procedures used (Creswell, 2014:251). In this regard the credibility, transferability, dependability, and conformability of a qualitative study is of importance (de Vos et al., 2011: 419-421).

→ **Credibility**

Research is credible if it accurately reflects the participants' perceptions, ideas, and views. Strategies that can be implemented to ensure credibility include triangulation of methods, member checking, clarification of researcher bias, providing data that both proves and counters a theme, prolonged engagement in the field, peer debriefing, and the use of formalised qualitative methods (Creswell, 2014:251-252; de Vos et al., 2011:419-420; Kumar, 2019:276-277).

In this regard, during interviews, the researcher attempted to remain objective, open-minded, and willing to learn throughout the interview process. The credibility of the study was furthermore ensured by the inclusion of verbatim quotes from interviews to validate findings. Different opinions raised by participants were reflected in the discussion of findings to ensure an in-depth analysis. During the presentation of findings, the researcher attempted to provide a credible representation of the findings by including direct participant quotes as well as discussing both pro- and counter perspectives provided by the participants. The researcher also compared the opinions of participants to the literature findings to ensure credibility. In this regard Fusch, Fusch and Ness (2018:22) postulate that triangulation, whereby multiple sources of data are compared, contributes to the reliability of results and saturation of data.

In addition, member checking was employed to ensure the credibility of the study. Member checking, also known as participant or respondent validation, includes the practice where data is returned to participants to check for accuracy (Birt, Scott, Cavers, Campbell & Walter, 2016:1802). For example, Dr T Gxubane requested the

transcript for perusal before making the decision to not remain anonymous, thus, the transcript was forwarded to him and minor changes were made.

→ **Transferability**

Transferability refers to the idea that the findings of the study may be transferred to another context, case, or circumstance (de Vos et al., 2011:420; Kumar, 2019:277). This is problematic in qualitative research, as findings are not meant to be generalisable, but rather there is strength in their particularity to a specific place, case, or circumstance (Creswell, 2014:253). This research is exploratory in nature, and specific with regards to the application of FGC within child justice in South Africa. Therefore, the intention is not for it to be generalised or transferred. However, the study's parameters and context have been explicitly documented in the methodology section to ensure that researchers who desire to transfer findings to another setting can be fully accountable for this decision (de Vos et al., 2011:420).

→ **Dependability**

Dependability and reliability go hand in hand. Here the researcher must ensure that the research process is logical, well documented, and reviewed (de Vos et al., 2011:420; Kumar, 2019:277). It is necessary to ensure that the steps and procedures used during all stages of research are documented, that transcripts do not contain any errors, and that the meaning of codes remains consistent (Creswell, 2014:252-253). In ensuring the research is dependable and reliable, all steps and procedures used whilst conducting the research were documented in the methodology section. Verbatim and unedited quotes from interviews with participants were included to validate findings from the study.

→ **Conformability**

Lastly, conformability questions whether findings are objective, data focused rather than researcher focused, can be confirmed by another, and whether the researcher can corroborate findings with evidence and auditing (de Vos et al., 2011:421). Similar to the above, conformability was ensured by confirming the findings through the inclusion of verbatim quotes from interviews and the comparison of participant

opinions. In addition, findings from the study were compared with research discussed in the literature review.

5.6 ETHICAL CONSIDERATIONS

Ethical considerations are widely accepted principles suggested by specific individuals or groups, which guide morals and provide rules and expectations which researchers are required to follow with regards to their behaviour and conduct during the research process. Ethical guidelines provide standards to be followed in dealing with others during the research process, inform the researcher's assessment of their own conduct, ensure participants are protected, promote trust and the integrity of the research and the researcher, and safeguard against misconduct (Creswell, 2014:132; Davies & Francis, 2018:28; de Vos et al., 2011:114). The researcher has ethical responsibility towards the participants as well as the discipline or science within which they are conducting research (Creswell, 2014:132; de Vos et al., 2011:114).

Ethical clearance for this study was obtained from the College of Law Research Ethics Review Committee, University of South Africa (UNISA) on 27 May 2019 (see [Annexure C](#)). The three ethical principles outlined in the Belmont report provided guidance for this study, namely respect for persons, beneficence, and justice (Department of Health, Education, and Welfare, 1979:4). The principles of respect for persons and beneficence were of specific relevance in this study.

→ Respect for persons

The principle of respect for persons involves ensuring participant autonomy, whereby persons are able to choose what can and cannot happen to them (Department of Health, Education, and Welfare, 1979:4; de Vos et al., 2011:117). In practical terms this requires participants to be fully informed about the purpose of the study, the nature of involvement, procedures to be followed, advantages and disadvantages of participation, and any potential harm that may arise (Creswell, 2014:137; Davies & Francis, 2018:28; Department of Health, Education, and Welfare, 1979:4; de Vos et al., 2011:117). In fulfilment of this, prior to participation, each participant read and signed the informed consent document ([Annexure A](#)) which outlined all aspects of the study, as well as the rights afforded to the participants.

Furthermore, the respect for persons principle necessitates that participation be voluntary and that participants are in no way forced or coerced to take part in the research, and are aware that they may withdraw from participation at any stage (Creswell, 2014:137; Davies & Francis, 2018:28; Department of Health, Education, and Welfare, 1979:4; de Vos et al., 2011:114-117). Participation in this research was voluntary. All participants consented to willingly participate in the study and were in no way obliged, coerced, or forced to do so. The informed consent document also informed participants of their right to withdraw from the study at any time, whereby any information recorded would be destroyed. None of the participants withdrew from the study.

→ **Beneficence**

The second Belmont Principle is beneficence, whereby the researcher is ethically obliged to ensure the participant is protected from harm, and that possible benefits are maximised whilst possible harms are minimised (Davies & Francis, 2018:28; Department of Health, Education, and Welfare, 1979:4). The study has a low to negligible risk for participants to suffer any harm due to the nature of the study. Participants were not required to provide any private or personal information or experiences. Rather, experts were questioned within their professional capacity and interviews focused on their professional opinions, experiences, and knowledge of the application of FGC as a child justice intervention in South Africa.

De Vos et al. (2011:119) add that the researcher is ethically responsible for ensuring the privacy, anonymity, and confidentiality of participants. At the start of each interview, participants were asked whether they would like to remain anonymous or if they consented to the use of their name in presentation. Many consented to the use of their name, but some chose to remain anonymous. This decision was respected and thus from the start of data analysis and throughout the presentation of findings, participants who chose to remain anonymous were given a pseudonym. In addition, when discussing biographical information pertaining to these participants, specific identifiers were omitted to ensure that participants cannot be identified.

In addition to anonymity, participants who volunteer information should be afforded confidentiality, whereby the information they provide is protected (de Vos et al., 2011:119). To ensure the confidentiality of participants, raw data was inaccessible to anyone except the researcher and her supervisor. Moreover, audio recordings have been saved on a password protected computer and hard copies of field notes and informed consent documents have been stored in a locked drawer to ensure confidentiality. The use of pseudonyms also ensured that data remained confidential in that it cannot be linked to participants who wished to remain anonymous.

→ **Justice**

The justice principle ensures the fair distribution of risks and benefits of the research and that all parties are treated in a fair and equal manner (Department of Health, Education, and Welfare, 1979:5-6). As mentioned, the study is one involving low or negligible risk, therefore no participant suffered any harm. With regards to this study, participants were treated equally and offered the opportunity to have their names recorded and thereby receive acknowledgement for their contribution.

In conclusion, with regards to the researcher's responsibility to the science or discipline, the researcher was honest, competent, qualified, objective, and respectful throughout the study (Creswell, 2014:139; de Vos et al., 2011:126). Data was presented accurately and truthfully in an unambiguous, unbiased, and non-discriminatory manner. In addition, the dissertation was submitted to *TurnItIn* to certify that the content was not plagiarised ([Annexure D](#)). The research was therefore, to the best of the researcher's ability, conducted and presented honestly, objectively, and in a manner that maintains the integrity of the researcher, the supervisor, the discipline of criminology, and the University of South Africa.

5.7 LIMITATIONS

Limitations experienced during research could include theoretical, practical, and/or methodological issues which could have an impact on the research process and outcomes (Hall, 2018:163). Therefore, it is important for the researcher to reference the limitations experienced when conducting research (Blaikie, 2010:32; Hall, 2018:163). The limitations experienced in this research will henceforth be discussed.

5.7.1. Methodological limitations

→ The paucity of previous research

As mentioned in the literature review, there is a lack of research regarding FGC in a South African context. Most of the research conducted is outdated and/or makes use of small samples, which negatively affects generalisability. A lack of statistics specifically relating to the implementation of FGC was also found, with most statistics referring to diversion as a whole, rather than specifically to FGC. The researcher found it difficult to establish a clear picture of where and if FGC was being implemented and by whom, and thus the researcher had to include this as part of the research problem. Research from an international scope was more readily available and therefore considered to provide information about FGC.

→ Limited sample size

During the research data collection process, the researcher found it problematic to find participants. This was partly due to the fact that little research within the South African context exists, thus it was difficult to identify parties involved in FGC who would be able to provide insight. It was also due to a lack of response from identified participants. Most often the researcher was able to find an email address, yet often potential participants did not respond. Snowball sampling aided the researcher to contact more participants than would have been possible, as participants were able to identify experts and provide contact information to the researcher. Where possible participants were contacted telephonically or via ResearchGate which proved more effective.

→ Limited focus on FGC as a correctional intervention

The use of FGC is prescribed by the CJA for diversion and correctional purposes as discussed in section 3.3. During the interview process, however, focus was placed on the use of FGC as a diversion option for children in conflict with the law. During the data analysis process this became apparent, and in hindsight the researcher should have placed more focus on the application of FGC as a correctional intervention for children in conflict with the law. Thus, recommendations were made for further

research to be undertaken regarding the application of FGC as a child justice intervention within the correctional setting.

5.8 CONCLUSION

The methodological outlay followed in this study was presented in this chapter. As the purpose of this research was basic and the research goal exploratory, a qualitative approach was followed. Purposive and snowball sampling was used to identify and contact experts in the fields of restorative justice and/or FGC. The sample size was based on saturation. Experts were interviewed face-to-face, via videocall or telephonically, using a semi-structured interview schedule. Data was analysed using the steps proposed by Creswell (discussed above).

The researcher attempted to provide findings that are valid and reliable by maintaining credibility, transferability, dependability, and conformability as best as was possible. In addition, the researcher remained ethical in conducting the research by ensuring participants were respected and that they came to no harm as well as ensuring that the research was completed in an honest, competent, qualified, objective, and respectful manner. Although some limitations were experienced, as is normal of any research endeavour, the researcher overcame these as far as possible and conducted the research to the best of her ability.

CHAPTER 6

PRESENTATION OF FINDINGS

“One of the ways we can build a better future for our children is by empowering them through allowing them to speak up for themselves. Of course, we as adults have to guide them and to take the ultimate responsibility but that is something quite different from patronising them. The rights of children must, importantly, include the right to be themselves and to talk for themselves”

(Mandela, 2003).

6.1 INTRODUCTION

When considering children in conflict with the law in South Africa, it was clear from the literature review that the criminal justice response must be one specifically suited to the needs, development, and context of children. As a restorative justice intervention specifically provided for in section 61 of the CJA, and in accordance with the literature review, FGC seems suitable in its ability to consider the context of children as well as to mirror Afrocentricity. The aim of this research was to consider the application of FGC as a child justice intervention in South Africa, with the objectives focusing on its suitability to South Africa and children, its current application status, and the potential for FGC to be implemented further.

In this regard, semi-structured interviews were conducted with experts in the fields of restorative justice and FGC. Chapter 6 presents the findings as related to the aims and objectives of this research starting with a summary of the participants with regards to their designation and experience in restorative justice and FGC. This is followed by discussions on the insights of participants regarding FGC as a child justice intervention in South Africa.

6.2 PRESENTATION OF FINDINGS

After confirmation of informed consent, anonymity, and permission for recording of the interview, interviews commenced with the researcher asking participants to provide a

summary of their involvement or research record concerning restorative justice and/or FGC. This is presented in table format in section 6.2.1. Following that is a discussion of findings under three main thematic headings: differentiating between FGC and VOM; the suitability of FGC as a child justice intervention in South Africa; and the current application of FGC in South Africa.

With regards to differentiating between FGC and VOM participants were asked to provide their opinions with regards to what differentiates FGC and VOM. They were further questioned as to whether they felt that FGC and VOM were often implemented in a confusing and unclear manner and whether this was a matter for concern. The findings obtained from the participants regarding these questions are discussed in section 6.2.2.

Following this, questions were asked to determine the suitability of FGC as a child justice intervention in South Africa. Participants were asked if they considered FGC specifically suited to South Africa and why. They were then questioned whether they considered it an ideal child justice intervention and why. Lastly participants were asked to provide insight into what is necessary to ensure FGC is implemented in a child sensitive manner. These discussions are presented in section 6.2.3.

Lastly, with consideration of the last main thematic heading, the current application of FGC in South Africa was discoursed. Participants were asked to give their analysis of the current application of FGC in South Africa. It was questioned whether FGC is currently implemented in SA and the reasons for potential lack of application, as well as who the current service providers of FGC are. Participants were then asked to provide some recommendations as to how the use of FGC as a child justice intervention can be encouraged. Findings with regards to these questions is offered in section 6.2.3.

The participant responses are presented in narration using verbatim quotations (referenced by the participant number) and compared with information from the literature review. This was done in order to capture the essence and meaning of the expert's views and opinions and, if applicable, their correlation to the literature.

6.2.1 Biographical information of participants

The sample of experts interviewed consisted of 12 participants, five of which are social workers, four find their expertise in law and criminal justice, one participant holds her doctorate in clinical psychology, another has his PhD in criminology, with the last having years of experience and qualification in education. Each participant brought with them a unique perspective based on their individual experiences as well as on their qualifications and areas of expertise.

The participants who waived their right to anonymity are mentioned by name while those who chose to remain anonymous are referred to using a pseudonym. The participant's biographical data is depicted in the table below.

TABLE 4: PARTICIPANT BIOGRAPHICAL INFORMATION

PARTICIPANT 1: ANONYMOUS – DR OF CLINICAL PSYCHOLOGY
Participant 1 is informally involved in implementing restorative justice interventions with children in conflict with the law, as well as family mediation. She is also involved in training and policy development regarding restorative justice.
PARTICIPANT 2: ANONYMOUS – SOCIAL WORKER
Participant 2 specialised in probation and correctional practice during her honours and worked for Restore, an NGO which provides restorative justice interventions at Pollsmoor Correctional Facility. Currently, she works at Khulisa Social Services in the Western Cape whereby diversion, including FGC and VOM, is offered to adult offenders.
PARTICIPANT 3: ANONYMOUS – DR OF LAW
Participant 3 has produced research on children in conflict with the law and the use of restorative justice interventions. She has also been practically involved with the implementation of restorative justice in a child justice setting.
PARTICIPANT 4: ANONYMOUS – DR OF LAW
Participant 4 has produced research on children in conflict with the law and the use of restorative justice interventions.
PARTICIPANT 5: MR BATLEY – SOCIAL WORKER
As supervisor of the probation unit in Pretoria in May 1995, Mike Batley was involved in a pilot project whereby FGC was tested with children in conflict with the law. This was a pivotal moment for Mike Batley who then started The Restorative Justice Centre in Pretoria along with a colleague who had also been involved in the pilot program, and where he has been since. The Restorative Justice Centre focuses on promoting restorative justice as a peacekeeping and conflict resolution mechanism in South Africa. Mike Batley has also authored articles and book chapters about restorative justice within the South African context.

PARTICIPANT 6: MS ALIDA BOSHOF – SOCIAL WORKER

Ms. Alida Boshoff began her career at The Restorative Justice centre in 2003 where she played a part in starting their diversion programmes and other services as well as trained in VOM and FGC. She is currently the Gauteng Area Manager for NICRO and has been with them for 10 years, whereby she has implemented FGC and VOM as part of adult and child diversion.

PARTICIPANT 7: MR HUGH FYNN – EDUCATION

Mr. Hugh Fynn was the head of a school coming up to retirement when he found himself involved in a mediation and developed an interest. As a result, he qualified as a civil and commercial mediator through the Stellenbosch Graduate School of Business and continued to develop his knowledge of restorative justice through experience, workshops, and research. Hugh Fynn currently runs workshops in schools, NGO's, and corporates training staff to make use of restorative justice practices including circle sentencing, conferencing and mediation. He is also often involved in implementing mediations and FGCs in disciplinary hearing cases in school and corporate environments.

PARTICIPANT 8: MR LAURIE GREYVENSTEIN – LAW

Mr. Laurie Greyvenstein started his career as a police officer in the 80s then studied law and began working for the justice department where he remained for about 25 years and held the following positions: maintenance officer, public prosecutor and magistrate. During his time as a magistrate, from 1995 until 1998, he worked in court 6 in Wynberg, which was used as the pilot project court for the Juvenile Justice Act. Here he was exposed to juvenile offenders, alternative dispute resolution, restorative justice, and FGC. For the last 13+ years he has been involved in alternative dispute resolution as a mediator and is the Director of Social Justice.

PARTICIPANT 9: DR THULANE GXUBANE – PHD IN SOCIAL WORK

Dr Thulane Gxubane is currently a senior lecturer at the University of Cape Town. His academic research output and interest areas include restorative justice, youth and adult diversion, youth justice, recidivism amongst youth offenders and youth sex offending. His PhD focussed on his work as a social worker with young sex offenders within a residential diversion programme. His love for restorative justice developed prior to the CJA, when the Child Justice Bill was still utilised, whereby he implemented restorative justice and FGC within diversion programmes.

PARTICIPANT 10: MS VENESSA PADAYACHEE – SOCIAL WORK AND CRIMINOLOGY

Venessa Padayachee is a social worker with an MA in criminology who has worked in various capacities within NICRO, including offering direct services (including FGC) to children and adults, programme design and advocacy. Currently Venessa Padayachee is the National Manager for Advocacy and Lobbying at NICRO and in this capacity advocates for prison reform and alternatives to imprisonment amongst other things.

PARTICIPANT 11: PROF FRANCIOS STEYN – PROFESSOR IN CRIMINOLOGY

Prof. Francios Steyn is an associate professor at the University of Pretoria. He holds a PhD in Criminology and both his masters and doctoral research focused on diversion. He has also published a number of articles and book chapters and finds interest in the research areas of sociology, violence prevention, youth justice and criminological theory.

PARTICIPANT 12: MR JOHAN VENTER – LAW

Mr. Johan Venter worked in the Department of Justice for 30+ years where he started off as a clerk and worked his way up to chief prosecutor. Within this capacity he was involved in implementing FGC. He is well informed and experienced in criminal and family law as well as alternative dispute and conflict resolution. Mr. Johan Venter is the founder of Family Network Solutions which offers mediation services for divorce negotiations, commercial cases, and medico-legal cases. The FGC approach is also at times applied, especially where children are involved.

It is apparent from the table above that the participants have a wide and diverse field of knowledge and experience in restorative justice and FGC and are thus able to provide insight into the application of FGC as a child justice intervention in South Africa.

6.2.2 Differentiating between family group conferencing and victim offender mediation

To provide insight into the application of FGC within the South African child justice context, participants were asked what they considered to be the difference between FGC and VOM. They were then questioned regarding whether they were of the opinion that the application of FGC versus VOM is sometimes unclear, and their thoughts on the importance of applying the interventions strictly according to their differences. These themes will be discussed separately.

6.2.2.1 The differences between family group conferencing and victim offender mediation

With regards to the differences of FGC and VOM, the main difference identified pertained to the number of participants involved in a FGC as opposed to a VOM. The majority of the participants (2, 3, 6, 7, 8, 9, 10, 11) agreed that more participants attend a FGC intervention than a VOM. Participants differed on their opinions of what 'more participants' means. Some participants (2, 3, 7, 8, 10) noted that only the victim and offender are present at a VOM, whereas a FGC is inclusive of the victim, the offender, and their support persons:

"The Act will tell you basically that your VOM is theoretically just between the victim and the offender whereas your FGC, or I used to like to call it community conferencing, involves more the extended family, members of the community, those that have been harmed by the infringement."

(Participant 3)

"VOM will be mediation between the victim and the offender ... FGC is wider than VOM ... I'm busy with one at the moment but that's in a divorce matter between grandparents, parents, and the grandchildren so we use that in the

family context as well. So, FGC you can involve the offender other parties, such as community members and obviously the family member of the offender if we talk about offences.”

(Participant 8)

“VOM doesn’t, is mostly specifically between those two parties [offender and victim], it’s not bringing in anybody else who is involved, anybody else who was affected because often, the victim, yes, has definitely been affected, but often other people in the broader community or in the family have also been secondary victims, you know, also been affected by that.”

(Participant 2)

Other participants (6, 9, 11) felt that ‘more participants’ did not exclude supporters and that a VOM could take place with supporters, but an FGC was more inclusive of a larger group of supporters:

“Absolutely there is a big difference between the two and yes the FGC involves a number of people and then the VOM involves very few, often just the victim and offender, however, if they want to bring someone they can, however, it is not as big as the family group conferencing.”

(Participant 9)

“Essentially with VOM we find it might be more with adults and it is the victim and the offender, and they may or may not have supporters on both sides with a facilitator ... I think more people involved with FCG as opposed to VOM.”

(Participant 11)

These findings correlate with the literature review, where it was noted that, although research and legislation (section 61 and 62 of the CJA) provide for the inclusion of only a victim and offender in a VOM, whilst FGC includes support persons and family, there are cases where, in application, interventions referred to as ‘VOM’ are inclusive of support persons (Hargovan, 2012:17; Kilekamajenga, 2018:75; Schoeman, 2014:np; Songca & Karels, 2016:453; Tsui, 2014:639-640; Umbreit et al., 2007:28-29 Zehr & Gohar, 2002:49).

The inclusion of family members and support persons within a FGC was identified as a predominant factor that separates it from other interventions. Participant 2 noted that the inclusion of family members and support persons within a FGC differentiates it from VOM in that FGC provides a platform where the harms suffered by those connected to the offender and victim may be addressed holistically within the broader system:

“VOM is important and is helpful but it doesn’t, I think it doesn’t always address the broader systems that might also be affected through crime or have been harmed ...”

(Participant 2)

Literature findings concur with the opinion of Participant 2. It is noted that the inclusion of family in a FGC affects the goal of the intervention in that focus is on restoring the relationships between the victim and offender, as well as family and community, and that all role-players are part of the restoration and healing process (Kilekamajenga, 2018:75; Umbreit et al., 2007:28-29; Zehr & Gohar, 2002:51). Inclusion of family members and other support systems provide the opportunity for all persons harmed by the offence to be part of the healing and to be healed.

Participants (1, 2, 7) noted the effect of the inclusion of family members and support persons in the implementation process of FGC, specifically mentioning that the process is more complex due to the inclusion of family members and other support persons:

“I don’t think they necessarily different interventions quite honestly, I think the principles are the same but obviously because of the different nuances ... you do approach it slightly differently because when you doing it within the family there are all those relationships already there whereas if you doing a VOM there are some differences. So, the principles are the same, but I think how you might orchestrate it, I think is the word I’m looking for, is different ... a VOM is almost more cut and dried.”

(Participant 1)

Lastly, participants 5, 11 and 10 noted that the difference between FGC and VOM is that FGC is an intervention more geared towards children due to its

inclusion of family members and support persons, whilst VOM is an intervention for adults:

“Depends who you ask, the way I’ve made sense of it, is that it’s basically similar except that the term FGC would be used with a child offender and then specifically it would involve the child’s family.”

(Participant 5)

“Essentially with VOM we find it might be more with adults and it is the victim and the offender, and they may or may not have supporters on both sides with a facilitator. But with FGC from my view that is more focused and geared towards children where you have to have the parents and guardians of the child involved as well as preferably community stakeholders and um a facilitator.”

(Participant 11)

“I think it’s [FGC] applicability with youth is particularly important because youth need kind of adult guidance and support. In terms of behavioural issues and that sort of thing.”

(Participant 10)

The findings are concurrent with the literature findings, with Walker et al. (2015:413) providing that family inclusion in matters of child justice is necessary. Gxubane (2012:113) considers FGC especially suitable for child offenders due to its inclusion of family. However, it is necessary to note that section 61 and 62 of the CJA provides for the use of both VOM and FGC as interventions for children in conflict with the law. The only difference highlighted in the definitions between FGC and VOM as included in the CJA, is whom may attend the intervention, with FGC including the offender, family members and support persons, and VOM including only the victim and offender. The findings of the study and the literature emphasises the significant role that family members/and/or support persons play in interventions involving children. Findings from the study therefore advise that implementing VOM without family members and/or support persons present is unsuitable for children in conflict with the law.

6.2.2.2 Unclear distinction regarding the application of family group conferencing versus victim offender mediation

The findings above indicate that the implementation of FGC and VOM with regards to who may attend is often unclear, with VOM sometimes also including support persons and family members as opposed to only the victim and offender. Therefore, participants were questioned whether they felt FGC and VOM were applied as distinct and separate interventions in accordance with defined criteria (FGC versus VOM), or whether they felt that the application of the interventions was similar notwithstanding the difference between FGC and VOM. The majority of participants (1, 5, 6, 8, 9, 10) agreed that the lines between the two interventions are often blurred in application:

“I’ve seen that in practice some people often confuse the two they will call it VOM but then there is lots of people then unfortunately there is still VOM - then VOM is the one they do in correctional facilities they call it victim offender dialogue but still there is a lot of people ... I don’t think we should be fussy about it as long as we promote Restorative Justice, but in terms of clarification it’s kind of murky.”

(Participant 9)

“Terminology is a bit messy. So, there’s several terms, VOM, VOC, RJC, and I think there isn’t really any way around that, and one has to just check how the person who’s using the term means it. So VOM originally meant 1 victim, 1 offender, 1 mediator, whereas the term conferencing implies involving everyone whose got an interest in resolving the matter ... The term conferencing is problematic cause people don’t know what that means. So, mediation has now become I think more generic and then sometimes it’s just with individuals and sometimes it involves all the other stakeholders. So, I think the only difference with FGC is that it’s referring to a child offender. I think that those distinctions are not absolute because even the CJA still today uses both those terms and I’m not sure why we didn’t try and change that at the time of the bill because I don’t think there’s any difference if you’re talking about children.”

(Participant 5)

“I think they do, kind of they do cross over, that’s why at NICRO we refer to our programmes as Restorative Group Conferencing. And involve Victim Mediation

only involves the victim and the offender, so ... we've struggled with the terms because they do kind of overlap."

(Participant 10)

In contrast, participant 2 and 11 felt that the interventions were applied separately and under the correct terminology:

"Ya I think at the moment it's quite separate ... in my experience at the moment it is quite separate."

(Participant 2)

The findings of the study support the literature by acknowledging that there is confusion with regards to viewing and applying FGC and VOM as distinct interventions. Resultantly, VOMs become inclusive of support persons and family members as opposed to only the victim and offender, as intended by the CJA. Limited data exists regarding the application of VOM and FGC within South Africa, and more specifically the child justice context. It is therefore impossible to determine the veracity of whether FGC and VOM indeed refer to the same intervention in some instances.

6.2.2.3 The importance of applying family group conferencing and victim offender mediation strictly according to their differences

In addition to whether participants considered the application of FGC and VOM to be unclear or not, participants were questioned regarding whether they considered it important – or indeed necessary - to apply the interventions strictly in accordance with the distinction between the interventions. Some participants (1, 5, 6, 8, 9) were of the opinion that the terminology used, whether it be FGC or VOM, was not important. Instead, they highlighted the importance and necessity of flexibility in application, whilst still maintaining key processes and structures:

"No, no, I think that if somebody is trained as a facilitator and is flexible in the way they put a process like that together it shouldn't make any difference whatever term."

(Participant 5)

"I don't think it should be an issue, you know that's why the process is informal, but it is structured, so we do give the process structure to be able to, to achieve outcomes."

(Participant 8)

"I'm scared to say we should have completely different kind of like procedures set out because then people are just going to apply that rigidly. There needs to be general guidelines, that would apply for both but then there needs to be added to that, so it would be on top of it, almost there needs to be things that are more relevant to the differences."

(Participant 1)

Although Zehr and Gohar (2002:53) distinguished between VOM, with only the offender and victim present, and FGC – as inclusive of supporters - they concur with the findings of the study, namely that different styles of restorative interventions are starting to blend, thus, differences are becoming less significant. Umbreit et al. (2007:30) have a similar opinion stating that interventions will be blurred over time as practitioners continue to find ways to improve their practices. The application of interventions varies based on the goals and priorities of those implementing them (Umbreit et al., 2007:29). These authors' opinions concur with the findings from the study which highlight that flexibility is more important than correct terminology.

It is, however, important to note that the lack of clarity with regards to terminology and the application of interventions in accordance with their procedural characteristics, could hinder effective research. This is due to the difficulty of analysing and researching a specific intervention and its effect when the application and differentiation between the interventions are unclear and convoluted.

6.2.3 The suitability of family group conferencing as a child justice intervention in South Africa

Although the literature supported the application of FGC as a child justice intervention in South Africa (Buckingham, 2013:810; Gxubane, 2012:113; Gxubane, 2016:8-10; Walker et al., 2015:413), it remains necessary to determine whether experts in the field of restorative justice and FGC are of the same persuasion. Thus, participants

were asked whether, based on their knowledge and experience, they considered FGC an appropriate intervention within the South African context.

Participants were then further questioned as to whether they considered FGC an appropriate intervention for children who come into conflict with the law. Lastly, participant opinions of what processes and procedures are required to ensure that FGCs are conducted in a manner cognisant of the best interests of child offenders were explored. The opinions provided by participants regarding these questions will be presented individually.

6.2.3.1 The suitability of family group conferencing in a South African context

The literature provides that FGC is an ideal intervention within the South African context as it mirrors Ubuntu philosophy through its inclusion of family and community members (Gxubane, 2012:101; Kilekamajenga, 2018:31-32; Schoeman, 2014:np; Zehr & Gohar, 2002:17-18). Ubuntu and restorative justice embrace the same values when dealing with conflict, including restoration, restitution, accountability, compensation and relationship reparation (Kilekamajenga, 2018:152-153; Gxubane, 2012:101-108; Songca, 2018:87-89).

Participants were asked if they considered FGC an ideal intervention for application within a South African context, as well as to provide reasons for their opinions. All of the participants considered FGC to be an ideal intervention for application within the South African context. In support of its suitability to the South African context, participants identified a number of themes, namely, inclusion of family, victim inclusion and reparation aims, and its adaptability to culture and context, which will henceforth be discussed:

- **Inclusion of family**

A substantial number of participants (1, 2, 4, 5, 10, 11) were of the opinion that FGC is an ideal intervention within the African context due to the inclusion of family members in the intervention. This is predominantly because the inclusion of family members and/or extended support systems is cultural-normative within an African

context. Family members provide offenders with support whilst encouraging them to take responsibility and accountability for their actions in a supportive and safe space. Victims are also provided familial support. FGCs also encourage family members to take responsibility for their members, acknowledging that family members and community are also impacted by the offence, and provide a space where broken relationships within families and communities can be healed.

"Very, because I think the African culture definitely is grounded in more kind of mediation as a whole and the family being involved in trying to sort out problems and what the family says, or the leader, usually the oldest male in the family has to say, the rest of the family will often abide by that."

(Participant 1)

At times even in, but it's rare, even in serious cases you might find that their first inclination is 'ok let's talk as a family', because at times they will even argue that even though you have a victim who has been raped, for an example, that person is part of a family. So, it's not only an offence against her person but it's also offence against the family so that's why their first inclination will be, okay even before perhaps we get the justice system involved how do we as family members try to resolve this."

(Participant 4)

"Yes, I think so. You know, once the offender is exposed, and I use the word exposed, to family members and his misconduct, he needs to be accountable and there's a bigger sense of accountability when you know it's not only a matter between him, the police, the state, and the court. We often see with the family type of mediations that we do, because of broken individuals we have broken families and because of broken families that leads to broken communities. So, the closer we can get the offender to take accountability to home, I definitely think it's better."

(Participant 8)

"What happens in our country, sadly enough, there is a lot of state intervention and it often takes away the parent's responsibility. That's still their child and that has to be encouraged even in a conference, the role of the parent, and ultimately, they have a responsibility for that child. And I think we take that

responsibility away from them far too easily, it has to be supported. Reintegration is critical, so the child committed an offence, comes through the criminal justice system, goes through interventions. I think FGC is also not just a good mechanism for looking at what the solution or the actions that can help the person have consequence but also how to reintegrate effectively after the event, after the offending behaviour, after the offence. How does it impact on the family dynamics, is that person able to reintegrate back more effectively?"

(Participant 10)

"Generally nothing happens in isolation, especially with young people. And if they are, if we are able to work with those close systems work with the family, I think that ideally that should be, or would, you know [be] a good crime prevention strategy."

(Participant 2)

The above findings correlate with the literature which confirms the importance of African traditional practices guided by the Ubuntu philosophy whereby family members and members of the larger community are included during conflict resolution. As such, importance is placed on family and community participation in all matters, with the idea that family and community are not separate entities but rather part of a whole. Children do not belong solely to their parents but also to their extended families, and if a child commits a crime it is a crime against the whole family (Songca, 2018:87-89).

'Collective responsibility' is a key African principle that speaks to the idea that all members of the community are hurt by an offence and, thus, are justified in being responsible for inclusion in resolving the issue (Songca, 2018:89). Similarly, Zehr and Gohar (2002:38) consider interconnectivity a key underlying vision of restorative justice, stating that we are all interconnected through a web of relationships. Hence, as provided for by both literature and the findings from the study, the similar notions regarding family inclusion supported by both restorative justice discourse as well as African culture, provide justification for the applicability of FGC as an intervention within a South African cultural context.

Notwithstanding the above findings, the researcher supports Moyle and Tauri's (2015:101) opinion that it is important to ensure that FGC reflects and respects the

culture of the community in which it takes place. Hence, it should be culturally responsive, empowering, inclusive, and reflective of the needs of the community.

- **Victim inclusion and reparation aims**

Participants 4, 7, 10 and 11 considered FGC ideal within the South African context due to its inclusion of victims, its reconciliation and reparation aims, and its ability to provide offenders with the opportunity to face their victims. Such notions are in line with the Ubuntu philosophy as well as comparative to the African way of doing justice:

“If you put a child in a place of safety for example and you don’t have the group conferencing you are missing important elements like victim empathy, that can be brought through restorative processes. We offer combinations of interventions, but, it doesn’t completely address those particular issues, like the victim empathy and there is nothing more powerful than coming in direct contact with the person or persons you’ve harmed, and just allowing the process of the conference to get to the whys and the root causes, instead of a lot of assumptions and stereotypes that get made about why people commit crime.”

(Participant 10)

“I think it has much, much potential and because of its flexibility as well in terms of the outcome. In fact, it’s the only diversion option that has a reparation. Reparation is a central aim, and victim participation. You don’t find that in other programmes. In the life skills programme, I think they write a letter, in the one programme they write a letter to the victim, that’s not victim involvement or victim empowerment at all. Victim involvement is absent in mentoring, in outdoor diversion, so in the true spirit of Ubuntu and reconciliation in SA, in my view, it is the best option.”

(Participant 11)

“Yes, it is, you see because if you look at it, if you read even some of the cases where, there’s this one where they talk about, the offender or the family had to pay a chicken, that’s how we resolve our issues most of the time. It’s not a panel system immediately, you have to negotiate.”

(Participant 4)

Findings from the study correlate with the literature, namely that FGC is comparative to traditional practice and the Ubuntu philosophy in its inclusion and support of victims (Kilekamajenga, 2018:31-32; Murhula et al., 2019:31; Schoeman, 2013:301-302; Schoeman, 2014:np Songca, 2018:92; cf. Zehr & Gohar, 2002). FGCs' are similar to African traditional practices, such as a Lekgotla, in that both allow for victims to be included in the process, victims are given a voice, and are offered support and vindication (Gxubane, 2012:108; Kilekamajenga, 2018:31-32; Murhula et al., 2019:31; Schoeman, 2013:301-302; Songca, 2018:92). The Reintegrative Shaming Theory also posits that victim inclusion in justice processes is ideal in creating a healing environment, underpinning both African traditional practice and restorative justice (Buckingham, 2013:858-859, Holler, 2015:106-107).

In addition, findings from the study concur with the literature, viz. that FGCs are considered suitable within the South African context as they provide an opportunity for the offender to offer reparation, as is done within African traditional justice. Reparation agreements developed through FGC are flexible enough to consider what is the norm within each culture, as was suggested by participant 4, whereby a chicken may be expected as payment through negotiation for example (cf. Dzur, 2017:498; Schoeman, 2014:np; Zehr & Gohar, 2002:43-44). In this regard, it is important for flexibility in FGC to ensure that cultural norms and conflict resolution practices are adhered to. The agreed upon reparation should protect both the rights of the offender and the victim. Reparation agreements should therefore be 'just deserts' and acceptable in a court of law (Braithwaite, 2002:567; Department of Justice and Constitutional Development, 2011:6; Dzur, 2017:498).

- **Culture and context adaptability**

As discussed in the literature review FGC is considered flexible in its ability to adapt and incorporate diverse cultures and languages (Department of Justice and Constitutional Development, 2011:5-6; Kilekamajenga, 2018:64-64; Zehr & Gohar, 2002:51). Participants 2 and 9 linked the flexibility of FGC to consider cultural and contextual factors affecting its suitability to the South African context:

“I think ya especially in a country like ours where there are so many different cultures, you know even just within different communities, there’s different things happening, and I think we should be kind of tailoring our interventions to the specific client and to their circumstances. And I guess with the right facilitator, with the right person doing that, it might be more or less effective.”

(Participant 2)

“For South Africa I think it is the most ideal for a number of reasons. We have cultural and historical issues that are obviously more often neglected in the mainstream criminal justice which is very wide. But through FGC we are able to bring in a whole lot of our unique, diverse and cultural and contextual issues throughout, right from the beginning all the way to resolution which doesn’t often happen in the main criminal justice.”

(Participant 9)

Participant 9 was asked to further explain and added the following:

“Obviously, they would say, some families, for the damage caused we think you must slaughter a goat. Because you see it makes sense for them, because part of slaughtering a goat, not only to unite the families, but it’s also for asking forgiveness from the elders who are gone. They would say we are here on earth but there are other people above us, they don’t talk about the law. They talk about whatever they believe in and we need to respect that. And that with that belief there’s a process of finding resolution to whatever the crime or conflict has occurred or/and any other thing that the family feels will help them feel better generally.”

(Participant 9)

Participant 4 specifically stressed the importance of considering what is acceptable within each cultural group when implementing a FGC:

“Some people will say the Xhosa’s are more liberal than others, than the Zulus for an example. So, it wouldn’t be a problem if you organise a FGC in a place, rural area in the Eastern Cape, right, but even then you’ll have to sensitise the people that you are engaging with. But it is something that I want to believe would be more acceptable quicker than if you take it elsewhere. I’m explaining

this to also sensitise you in regard to differences among black people and how they engage with their customary practices. So, and even among the Xhosa it will also differ. Also depending on where they are situated and how you engage with them. I think also because in some instance you will find that its men who are head men. Like in my village where I come from. If you would want to do a FGC you will have to go through him. You cannot just do it, go into the village, and just do it, you know. You'll go through him and you'll have to explain."

(Participant 4)

The South African Government (2019) describes South Africa as follows: *"The distinctive charm of South Africa comes from its history and also by moments of great change and strides of progress brought about by a people united in a diversity of religious beliefs, cultures and languages"*. South Africa has 11 official languages, with each representing a different culture or cultures. Each official language, by law, has equal status. In addition, over nine different religions are followed by South Africans (South African Government, 2019). Section 30 of the Constitution provides that each person has the right to use the language of their choice and participate in the culture of their choice as far as it remains consistent with the Bill of Rights. Thus, participant acknowledgement of the flexibility of FGC to consider the diversity of culture and language within South Africa when considering its suitability, is of key importance to this study.

The suitability of FGC to provide for the Eurocentric population of South Africa was, however, questioned. Participant 1 and 3 highlighted that in general African people, as opposed to people from Eurocentric descent, are more accepting of the philosophy of restorative justice and restorative justice interventions such as FGC due to its similarity to their African cultural persuasions:

"White people don't understand this whole concept of joint justice or joint repatriation. Or we don't get it because we come from a system of individual rights. Everything is about my rights. Whereas if you look at the African culture it's communally based, its communal values. So often I find with a black student, for example, they find constitutional law very strange because it's about individual rights. And if you translate that back to RJ processes, we as whites

can't understand the 'no wait you want me to now make justice with the community or with the family... I'm confused.'

(Participant 3)

"I'm not saying that western cultures won't work with this, they will, but I think the African cultures are more grounded in it."

(Participant 1)

In response to these viewpoints, participant 1 and 3 were asked whether they were of the opinion that the younger generation of Eurocentric adults within South Africa were starting to embrace and accept African cultural persuasions, as this would influence their acceptance of, and involvement in restorative justice interventions. Participants felt in this regard that this was happening to a small degree but that progress still needs to be made, especially with regards to law:

"I think we have started to embrace it, I wouldn't say in a big way. The white or the western culture is still, I think, very grounded in a litigious way of doing things which I don't think is what the African cultures are grounded in. So, I think we haven't embraced it like we could or should. But I think it's there and I think it's, I would use the word creeping in, which I think is good."

(Participant 1)

"If I have to look at law students 10 years ago and today. Yes, I do think we are starting to see each other's points if I can put it that way. But we are seeing it on paper. A lot of white people I often asked: 'have you ever been into Soweto or Khayelitsha or Tembisa.' 'No never.' Okay so then don't tell me you know what's in the best interests of that child that's living in a shack. And the reverse is equally applicable. If you say to a black person, 'have you ever lived in a penthouse in Sandton with private education?' So ya to a degree we're meeting in the middle. But there's still this problem in law where we fight between the Western values vs African values."

(Participant 3)

Findings largely portrayed the idea that restorative justice and FGC are consistent with the Afrocentric way of doing justice, whereas retributive justice is more consistent with

the Eurocentric approach to justice. Yet, it was also expressed by participants (1, 3, 4, 5, 9) that although restorative justice appears to be similar to the African traditional justice approach, and regardless of the steps taken in the CJA to incorporate restorative justice and the philosophy of Ubuntu into child justice, it is still necessary to approach traditional leaders and research traditional methods of justice to ensure we are adequately integrating tradition and justice:

“But you need further research and education as to [FGCs] effectiveness, its applicability, when it’s ideal, when it’s not ideal, you know. Instead of just pushing this into an Act which we borrowed from all over the world, and then going this must work in a South African context, it doesn’t.”

(Participant 3)

“How do you try to make sure that you don’t have separate systems you know? How do you try to ensure that there’s some form of integration so that both communities, for lack of a better word, can actually benefit from this? Because as Africans we survive, that’s how we live, we negotiate. We have our own processes and they are anchored on negotiations and finding solutions through, you know, interacting and talking. So already we have that, so I believe that these other systems can actually consolidate already what we have but we are not doing enough of that integration, or interaction, we don’t do that. I believe that your gateway is traditional leaders. So, we need to start working very closely with them because you’ll be surprised at how much some are knowledgeable and just willing to be involved. So, I think that is the gateway, starting to work with traditional leaders and traditional leaders will open doors.”

(Participant 4)

“Some of the issues that I’ve touched on in some of my own thinking, one is the role of traditional practices, cultural approaches to dealing with conflict and to dealing with crime. And those run quite deep. So obviously some people in urban areas might be distanced from them but they are still there so they’re a point of reference that I think we shouldn’t ignore. It’s actually just silly to ignore them because they’re a resource we can actually tap into. Yes, I think so. And not necessarily only traditional leaders but also just to tap into those traditions of how to deal with something having gone wrong, how is that dealt with culturally.”

(Participant 5)

Some participants (3, 4, 5, 9) were of the opinion that it's time to create new interventions, or names, which bridge the gap between restorative justice and traditional African approaches:

"I think maybe it's time to come up with new models, there's nothing stopping us. As scholars we kind of rigid in the way that we think - one thinks it should fit neatly into boxes, one talks about theories. Maybe we should check this out and come out with new models. Maybe even these two names [FGC and VOM] do not even apply later. We rename that too."

(Participant 9)

"I remember one of the debates, right at the beginning, the people who actually picked up on what was happening in NZ and introduced it to SA, they were debating what name to give it and the question was should it be FGC or should it be the word that's used for some traditional practice, like a lekgotla, and they decided against that because they said people might feel it's hijacking the term or they might mean different things by it. So, in the end that's why that name or other versions of it are not in the Act probably. And I'm not disagreeing with that, but I think that it might be a way of, if we were able to build the bridge between the two more actively or specifically it might be a way of increasing public acceptance of it as well as implementation of it."

(Participant 5)

Authors such as Braithwaite (2002:564-565), Louw and Van Wyk (2015:498-499) and Zernova (2007:506) caution that there is the potential for Western ideology to become too prescriptive of FGC. It is necessary to ensure programmes are in fact representative of the cultures within which they take place (Moyle & Tauri, 2015:101; Tauri, cf. 2015). It is important to note that the context of South Africa is unique not only due to its diversity of people, but also because of its history, which along with the prevalent socio-political turmoil is causative of a South Africa plagued by many socio-economic ills (Hargovan, 2013:25-26; Steyn, 2010:6). In recognition of these challenges, participants highlighted the value of FGC, with its flexibility to context and

culture, which makes it an ideal intervention within a diverse country, such as South Africa.

The finding that traditional leaders and literature should be consulted, and culturally relevant interventions be created, as well as the finding that persons of Eurocentric origin may be less accepting of restorative justice interventions, should be considered in conjunction. In this regard, it is necessary for research to focus on creating a new justice response, or to adapt the FGC intervention accordingly to provide a justice response that is flexible to the diversity of South Africa with regard to its various cultures and contexts. Zehr and Gohar (2002:9) state that restorative justice programmes should be built from the bottom up, whereby through dialogue, needs and resources assessment and experimentation; models are found that suit the situation of a community.

6.2.3.2 The suitability of family group conferencing in a child justice context

Literature provided that FGC is suitable for child offenders based on its inclusion of family and support persons, as well as its appropriateness in handling the developmental capabilities and needs of children (Buckingham, 2013:810; Gxubane, 2012:113). Against this background, participants were questioned whether they considered FGC an ideal intervention for children in conflict with the law, and to provide reasons for their opinions. All of the participants considered FGC an ideal intervention for application within a child justice context:

“I certainly do. I wish it could have happened in this mediation I’m involved with at the moment. Because it didn’t [and] trying to do it as a mediation rather than had this happened as FGC at the outset, it could have nipped everything in the bud.”

(Participant 7)

“Yes, no doubt about that.”

(Participant 5)

Some divergent opinions arose regarding the context within which FGC should be applied for children. Participant 11 was strongly of the opinion that FGC is only suitable

for application where a child commits a minor crime, whilst serious crimes should be dealt with via the normal criminal justice trial process:

“I do think so but not for all types of offences. In my view it’s more for, or those who benefit more from FCG’s are younger children and in cases where it is not a serious offence. Perhaps a minor property offence.”

(Participant 11)

Participant 11’s opinion highlights an ongoing debate in the field of restorative justice, as mentioned previously in section 3.6. Some authors consider FGC an inappropriate intervention for application to serious offences whilst others are of the opinion that FGC is an appropriate intervention for all crime types (Batley & Skelton, 2019:3; Dzur, 2017:489; Gxubane, 2012:110-112; Louw & Van Wyk, 2015:494-501). In this regard, it is noticeable that the CJA provides for the implementation of FGC for schedule 1, 2 and 3 offences and for diversion, sentencing and correctional purposes.

Participant 11 was further questioned with regards to whether he is of the opinion that FGC is an appropriate intervention for correctional and rehabilitation purposes as part of a child’s sentence. Participant 11 responded in the affirmative stating that FGCs play a complimentary role to the correctional process, in conjunction with other programmes:

“It can play a complimentary role as part of rehabilitation, as we have with adult offenders in prison, but not as the only way of dealing with serious offenders. Not at all. FCG’s in those contexts, with serious offences, [play] a complimentary role to other developmental and rehabilitation programmes.”

(Participant 11)

The necessity for implementing FGC in conjunction with other programmes and interventions for diversion purposes was also highlighted by participant 2, a social worker at Khulisa Social Solutions:

“It should be done with children. Not to say that it should be done by itself. Like in combination with other intervention programmes because that definitely plays

or can definitely play a role. But in combination with other interventions if there is other needs of the young person.”

(Participant 2)

Findings from the study highlight the importance of implementing FGCs in conjunction with other programmes for the purposes of rehabilitation and diversion. These findings concur with findings of authors (Gxubane, 2012a:154-159; cf. Gxubane, 2018; Steyn, 2010:113-117; Tshem, 2009:121-124) who propose that FGCs should be linked to other interventions and programmes, and services and support should be offered after the FGC. The Social Control Theory foundations this in its proposition that a child's involvement in conventional activities and their commitment to a goal plays a role in preventing crime (Brown et al., 2013:342-343; Hirschi, 2002:21). FGCs end with a restitution agreement which should contain options and interventions that will assist the offender in changing their behaviour. Section 61(6)(a) of the CJA provides for the inclusion of many options in the agreement, which can assist the child in conflict with the law with their needs and circumstances.

In addition to acknowledging the suitability of FGC as an intervention for children who come into conflict with the law, participants also highlighted reasons why FGC is suitable for children who come into conflict with the law. These reasons included its ability to provide accountability, reparation, and behaviour modification for offenders, as well as the benefits of family inclusion. These themes will henceforth be discussed:

- **Acceptance of accountability, reparation, and behaviour modification**

The benefit of FGC for child offenders was a distinct theme that emerged in the study. Numerous participants (1, 3, 5, 6, 10, 11) were of the opinion that FGC provides child offenders with the chance to accept accountability, offer reparation, and change their behaviour whilst being supported by family and professionals:

“I think the two things. The one is that children need to accept responsibility for their actions. And secondly, they need to make amends. They need to make amends but also to change their behaviour. So, part of the FGC addresses three of these things and I think that makes it so important to work from a restorative perspective.”

(Participant 6)

"I think it leans; it broadens the scope of how the child sees. Or let me put it this way, how far his infringement has gone, how far he's affected, not only the victim, society, the fabric of society. Which I think is good from a restorative perspective. It's not simply deterrent."

(Participant 3)

"By talking about what's gone wrong, why it's gone wrong, what norms and values have been breached, why are those norms and values important. Just by having that conversation, is a way by which all the participants actually learn and grow and develop. If a child has made a poor moral choice, which by definition committing a crime is, then helping a child to grow morally is obviously an excellent thing to do."

(Participant 5)

"So, it holds them accountable and fortunately, coming back to you need a professional to then identify okay there's a parenting problem here, there's a relationship problem between parent and child. It opens the door for further work that can be done to address the problem."

(Participant 11)

"It's particularly important because as a young person you're still learning, and they can be in a conference with a lot of wisdom coming from the participants."

(Participant 10)

In addition to the ability of FGC to provide children in conflict with the law with the chance to accept accountability, offer reparation, and change their behaviour, participant 1 also noted that children who partake in a FGC are not criminalised:

"Restorative justice, I really do think has to be the way to go with children. Where they've got to face up to the consequences, they've got to face up to what they've done. But to not criminalise them because what are we doing then, we setting them on a path that obviously is very destructive for them. But it's also destructive for society so this is not just about them. It's about trying to improve

our society because it doesn't help society if we've got a whole lot of people being criminalised."

(Participant 1)

Criminalisation of a child often results from incarceration and the acquisition of a criminal record, whereby the child is labelled 'criminal' and stigmatised according to societal connotations. Research confirms that criminalisation has a negative effect on the rehabilitation and reintegration of the child into law abiding society (Buckingham, 2013:815-816; Dzur, 2017:484; Tsui, 2014:641; Wong et al., 2016:1311). Reintegrative Shaming theory theorises that disintegrative shaming, whereby the offender is shamed and isolated, results in stigmatisation which denies the offender the chance to own accountability and destroys relationships, but does not prevent crime (Braithwaite, 1989:101; Calhoun & Pelech, 2010:289; Gxubane, 2012a:62).

In addition, rather than provision of positive development and skills through interaction with law abiding society, incarcerated children are further criminalised through their interaction with other prisoners, whereby they create networks and learn criminal skills (Richards, 2011:7). Section 51 provides that diversion and the utilisation of restorative interventions, such as FGC, aim to keep children away from the criminal justice system and prevent them from having a criminal record.

FGC therefore allows children who conflict with the law to avoid criminalisation whilst still owning accountability and provides the chance to make amends and change their behaviour (Anderson, 2017:169-170; Connolly, 2010:376; Holler, 2015:106-122; Steyn, 2010:112; Tshem, 2009:50-51; Zehr & Gohar, 2002:22). Shaming is reintegrative rather than disintegrative as it holds the offender accountable whilst allowing them to be reintegrated back into society, and to change their behaviour, which according to Braithwaite (2000:1) will prevent crime. International and national research findings, as discussed in section 3.2., found FGC mostly successful in its ability to provide accountability, closure, reconciliation, healing, forgiveness, and relationship reparation. Thus, the opinion of participants that FGC is ideal for children due to its benefits for offenders correlates with the findings in literature.

- **Benefits of family inclusion**

FGC was also considered an appropriate intervention for children in conflict with the law due to the inclusion of family members in the process. Participants 2, 7 and 8 were of the opinion that including family provides the child in conflict with the law with support and also ensures families take responsibility for their children:

“I think that, you know having to face a lawyer or a judge or a headmaster is quite threatening to a child, and having you know, not necessarily having your parents present when that is happening. Whereas in FGC your parents would be alongside you, or you know whoever your guardians or mentors were in that instance. So, there is that security, that feeling of security, both for victim and perpetrator and I think that having parents there as well enables post the conferencing that counselling of that child to take place in a far more informed manner.”

(Participant 7)

“If we are tryna [trying to] you know restore, we are tryna [trying to] put right what was wrong, we are tryna [trying to] change behaviour, then the family ideally should be involved in that, or needs to be involved in that if we gonna [going to] try, you know, do something kind of sustainable for young people.”

(Participant 2)

“The parents of the children should always be involved I think when we deal with children and crime and offending. Accountability is back at home. There’s a responsibility not just from the parents but also from the child to contribute to good families. Parents don’t like to be called to the courts. So, the chances that when you involve parents to rather participate in disciplining their own children, the chances are better that they will be involved with the discipline of the child.”

(Participant 8)

In concurrence, the literature provides that inclusion of family in justice interventions, more specifically FGC, has a positive influence on accountability, lowering behavioural issues, and improving emotional support and belonging (Walker et al., 2015: 413). The Reintegrative Shaming theory provides that restorative justice interventions are most effective when shame is communicated through family and friends who both offer support and hold the offender accountable (Braithwaite, 2000:7). The Social Control

Theory also notes that a child's attachment to significant others (family and friends) and belief in the social norms and values communicated by those significant others (family and friends) plays an important role in ensuring socially acceptable behaviour (Wiatrowski et al., 1981:525). Participants highlighted the significant role that family play in supporting, assisting, and changing children in conflict with the law whilst still holding them accountable.

In addition to the provision of support that family inclusion provides, Participant 10 noted that family attendance affords a space for any family dysfunction or circumstances causative of the child offenders' behaviour to be highlighted and dealt with. The child is given a voice, and the opportunity for relationships to be healed and understanding to develop arises:

"Offending behaviour cannot be looked at in isolation of the system it works in or functions in. So often, there's discourses that it's just by changing the offenders' behaviour that will bring about the change. But I think that there could be dysfunction in the family. Which is why one needs to include the families. And this is a wonderful opportunity 'cause families don't even try to understand the why. Some, you know where there's dysfunction, there may be not healthy relationships, so just facilitating a conversation to help them hear one another. 'Cause it's wonderful about a family who are conferencing, you actually get to, one person speaks at a time, you get to listen, and obviously more deeper than you would in general. Young people also get an opportunity to speak, because sometimes parenting is quite dismissive of the voice of the child. To understand why, and the intention, and a whole lot of other issues that are going on. It's a wonderful opportunity to build connections and relationships, to test assumptions and truly understand where the kind of offending behaviour comes from."

(Participant 10)

Gxubane (2016:8-10) is in agreement with the opinion of Participant 10 in noting that parental inclusion aids in ensuring parents are not the root cause of the child's issues, and if this is the case, interventions can be implemented. Children who commit crime are almost always the products of victimisation (Freng & Taylor, 2010:506; Hargovan, 2013:25-26; Maree, 2018:87; World Health Organization, 2017:np). FGC provides an

opportunity for those causative criminal factors within the child's family and environment to be brought to light and then handled in a manner that protects and assists the child's future avoidance of criminal behaviour.

Gxubane (2012a:154-159; cf. 2018) also considers FGC ideal for assisting with the successful reintegration of children into society. His doctoral study highlighted issues faced by young offenders when reintegrating into society that could have been avoided had there been parental acceptance and support (cf. Gxubane, 2012a). Gxubane (Participant 9) was interviewed as an expert in this research, and again raised the benefit of FGC in preventing recidivism and aiding reintegration:

"It has a great value in preventing recidivism and also based on my experience as a practitioner as well as a researcher I've found value. When I went back to look what happened, I also had records from the courts, I had records from the centres where they were and those especially where I had invested. I realised that it was not wasted time with that, especially where the sexual abuse happened between the family or close neighbours... You need to deal with the emotional and relationship issues. They are very fundamental because if a child is out and nobody accepts them or they don't feel alright or they are discriminated or whatever, they immediately want to go back to crime or something else."

(Participant 9)

The literature review and findings from the study highlight the importance of the inclusion of family when dealing with children in conflict with the law. Family provides the offender with the support and assistance they need to handle the effects and the outcomes of the offence whilst still holding the offender accountable. The child is also assisted with rehabilitation and reintegration, whereby family play a key role in offering support. Additionally, any dysfunctions within the family can be highlighted and intervention and assistance implemented. Participant 5's response aptly sums up the benefits of FGC for children in conflict with the law:

"I think that as an intervention to help a child offender realise the implications of what they've done, to accept responsibility for what they've done, and to be

supported in that by their family or extended family or other community members, at a very difficult moment, I think is a really profound thing to do.”

(Participant 5)

6.2.3.3 Ensuring family group conferencing is child sensitive and appropriate

In light of findings which indicate that FGC is appropriate for children in conflict with the law in a South African context, participants were asked to discuss what they consider necessary provisions when implementing a FGC in a manner that is child sensitive and appropriate. In this regard, participants considered the following themes of importance: adequate preparation, maintenance of the respect and safety of children, consideration for age, needs and context of children, and adequately trained facilitators. Although each theme will hereafter be discussed individually, findings indicated that the themes overlap.

- **Adequate preparation**

A substantial number of the participants (1, 2, 3, 4, 5, 9, 10) were of the opinion that adequate preparation of participants prior the FGC is imperative to ensure that it is child sensitive and appropriate, and allows for the child to be emotionally prepared, well-informed concerning their rights, and knowledgeable about the procedure to be followed. In addition, facilitators must be adequately prepared to deal with the needs, emotions, and issues of all parties:

“Ya, I think it’s important for the preparation, like I said, that both parties understand how the process will work. So, one can anticipate the questions, what do you think some of the questions could be, you know how would you answer those questions? So, you not just going in there blind. And so, we emphasise a lot on the preparation phase before a conference. And for them to indicate that anytime the conference can be stopped, if it’s getting too much and emotionally, they are not handling it. So that environment of safety is very critical, especially for the victim.”

(Participant 10)

“Again, I think it’s got to do with preparation. Preparation before needs to be from all angles. Not just from the legal or the criminology. It has to come from different fields to prepare both the victim and the offender for this process. So, for me it’s the lead up, it’s not the actual event itself.”

(Participant 3)

“So, thinking about your question, I think it would be, to be aware of the world of the child. There preparation would be very important to understand what that reality is for the specific child, and to be aware of the dynamics in that context. You know, so what prompted the offence, what are the dynamics in their family, in their community and to be alert to those in the process.”

(Participant 5)

The finding that preparation is important to ensure the effectiveness of FGC concur with the literature which considers preparation as the first stage of the FGC process and notes its importance for all parties (Carroll, 2016:138; Dzur, 2017:488; Steyn & Sadiki, 2018:233; Tshem, 2009:65-66). In addition, international and national research on FGC, as discussed in section 3.2., emphasised the importance of adequate preparation to ensure that FGC takes place in a manner that is child-sensitive and aimed at avoiding traumatising.

The findings from the study, as well as the literature provide that adequate preparation allows for participants to be aware of the process, their right to withdraw, and the questions they can expect during the conference; and thus be ready emotionally and cognitively for the intervention (Carroll, 2016:138; Department of Justice and Constitutional Development, 2011:4-6; Gxubane, 2012a63-64; Steyn, 2010:116-117). Adequate preparation also prepares facilitators with knowledge regarding the context and circumstances (i.e. emotional triggers, family dysfunctions and so forth) of the child, which ensures the facilitator is equipped to protect the child from potential emotional harm (Steyn & Sadiki, 2018:232; Umbriet et al., 2007:31). Maintenance of the child’s dignity and safety and consideration for the age, needs and context of children present at FGCs were identified as themes highlighting necessary provisions to ensure FGCs are conducted in a child sensitive manner.

- **Consideration for the age, needs and context of children**

Participants 1, 2, 8, 10 and 12 noted the importance of considering the age, needs and context of the parties, especially children, partaking in the FGC:

“It has to be child friendly so, being sensitive to children’s needs and issues of power, like I mentioned.”

(Participant 10)

“I don’t do it with children per say but I would think you know, that would depend on the age of the child, how young the child, or you know, if the child’s in adolescence you know, where are they falling, you know, within that range, and then catering to the needs of that child obviously.”

(Participant 2)

“We must meet the needs of the child at the age of that particular child. So, it must be age sensitive. I don’t if this is the right word, or appropriate, age appropriate, to start off with.”

(Participant 8)

“You need to look at unique circumstances. Yes, there’s certain clauses that are standard. But every set of facts are unique. Children are unique. Their requirements are unique. The history that have led up to where they are now informs that’s process.”

(Participant 12)

Literature concurs with the finding that FGCs should be conducted with consideration of the child’s age, needs, and contexts. The needs of each child are unique and based on numerous circumstances including age, gender, ethnicity, needs, environmental contexts and so forth. Hence, facilitators must be equipped to accommodate the unique circumstances of individual children (Hargovan, 2013:33; Naylor, 2010:668-669; Richards, 2011:7; Steyn & Sadiki, 2018:232; Zehr & Gohar, 2002:50-51). Findings of this study, as discussed in section 6.2.3.1., highlight the importance of FGC being culturally appropriate thereby providing for the unique needs of participants. Participant 2 specifically mentioned the importance of conducting FGCs in a manner which the child can understand as key in ensuring FGCs are child-sensitive and appropriate:

“...speaking in language that is understandable, proper explanation of the process so that you know the child understands what’s happening and what it is happened and obviously getting consent from everyone is important.”

(Participant 2)

These findings corroborate with two critical issues from the literature review. Firstly, facilitators must ensure children understand what is going on. The court process can be traumatic for a child as they lack the knowledge and language to understand legal processes and procedures (Carroll, 2016:132-133). The Department of Justice and Constitutional Development (2011:5-6) commands that, when implementing a restorative justice intervention for a child, such as FGC, every effort should be made to ensure that they understand the process and are able to participate meaningfully. Secondly, FGCs must be conducted in a language the child can understand and it is important that facilitators ensure that FGCs are conducted in the language of the parties, with a translator present if necessary (Gxubane, 2016:16-17).

As discussed in the literature, authors debate the ability of FGC to meet the needs of children, with some finding FGC inadequate to cater for the rights and needs of children, whilst others maintain it has the ability to provide for children and their unique needs (Gal and Moyal, 2011:1023-1029; cf. Lynch, 2010). In this regard, the literature provides that the ability of FGC to meet the needs of children, as well as maintain their rights, is dependent on the facilitators, who should, as also highlighted in the study, be adequately trained to deal with the specific needs and rights of children (Carroll, 2016:138; Slater et al., 2015:639). The necessity for adequately trained facilitators was identified as a necessary provision for the assurance of child-sensitive and appropriate implementation of FGC and will be discussed further on.

- **Maintenance of the respect and safety of children**

The necessity to ensure FGCs are conducted in a safe and respectful manner, was deemed important by participants 2, 10 and 11 when discussing child sensitivity and appropriateness. In this regard, participants noted themes regarding the protection of the integrity and rights of the child, and the assurance of no harm, emotional and/or physical, to the child:

“Another important thing for me is establishing those ground rules at the beginning of the session. Those ground rules that, you know, kind of the guidelines for the interaction. And getting that consent from each member to try and respect those guidelines so that everyone has that opportunity to speak, to listen, to be heard without interrupting or talking over one another. But maintaining, trying to maintain that respect between members.”

(Participant 2)

“It must be a safe environment for the conversation to happen. Safety is very critical for the victim, yes, but also for the offender. You don’t want somebody screaming at a person “Oh, you useless.” So there’s rules that regulate the conference, and we decide on, respect for one another. That if someone is speaking, we don’t speak. That’s why we use the talking stick. So, if someone’s speaking then another person won’t be able to speak until they really hear that person. The facilitator is responsible for keeping the space safe and to protect the people involved so if there’s been that where rage happens and they want to hit each other, obviously the conference can be stopped. And so that’s why it’s critical. Ya, you’ve got to constantly be aware of what the dynamics are. To maintain the rules of respect and dignity, listening to one another.”

(Participant 10)

“One has to be careful to manage the emotions of the child and the victim’s emotions because things can very quickly derail. The victim is angry and screaming and shouting at the child, you not going to get anywhere, so that is a skill. And I still believe that it should be professionals who implement these programmes.”

(Participant 11)

These findings are in accord with the literature which also emphasised that respectful dialogue is key to FGCs to ensure that all parties are given an equal and fair chance to voice their story, and all parties feel comfortable and safe to speak (Braithwaite, 2000:14; Department of Justice and Constitutional Development, 2011:5; Kuo et al., 2010:320; Presser & Van Voorhis, 2002:167-170). International and national findings discussed in section 3.2 noted that for the most part proceedings in FGCs were conducted in a respectful, fair, supportive, and equal manner.

It was stressed however that adequate facilitation and preparation is needed to ensure that conferences are not too offender or too victim orientated and that a power-imbalance between adults and children does not arise (Gxubane, 2012a:268; Gxubane, 2016:16-17; Tshem, 2009:68; Steyn, 2010:115). Thus, the theme identified by participants with regards to maintaining the safety and respect of participants overlaps with the identified themes of ensuring adequate preparation and facilitation to provide for the safety and respect of participants in a FGC.

It is interesting to note that the maintenance of safety and respect was linked to ensuring rules are followed. Several participants (1, 2, 6, 8, 10, 11) considered it is necessary to have set ground rules, guidelines, or an agenda to ensure that respect and safety of participants is maintained and that the intervention is child sensitive and appropriate:

“There must be structure. Although it’s informal it must be structured so there must be an agenda. I often find that if we work with these conferences and there’s no agenda that we wonder off and um don’t get to deal with the necessary stuff that needs to be dealt with.”

(Participant 8)

“I would say that you definitely need to have guidelines around when to have the child present or not. But again, how do you put that. I’m just thinking how would you define that, because again I think a lot of it is just about being sensitive to where the people are at and what their own functioning is and not exposing the children to you know situations that are gonna become destructive or quite honestly also not destructive for the other people. I mean some children can also be very destructive. What I don’t want to see is sort of a cowboy approach where it’s like, ok so now we going to FGC with the child. Right everybody gets together, sit in a room, and thrash it out. There would have to be a set out process.”

(Participant 1)

In correlation to the findings, authors (Hoffman, 2017:261; Louw & Van Wyk, 2015:499; Ward & Langlands, 2008:356) also propose the creation of legal guidelines

or safeguards to ensure that both the victim and offender are kept safe and that their rights are respected. Yet in doing so caution must be taken to ensure that guidelines do not compromise the ideals of FGC by inhibiting its flexibility to meet the specific needs of individuals (Braithwaite, 2002:564-565; Louw & Van Wyk, 2015:498-499; Zernova, 2007:506). As will be discussed later, participants note the launch of an accreditation board for restorative justice practitioners which will assist in ensuring facilitators are adequately trained to facilitate any restorative justice interventions. In this regard, the rights afforded to persons as discussed in the Bill of Rights are vitally important when developing rules and regulations for the implementation of FGC.

- **Adequately trained facilitators for the family group conferencing process**

The necessity for adequate preparation, and the assurance of an intervention that protects the safety and respect of children, and which considers their age, needs and contexts, can all be linked to adequate facilitation. A trained facilitator will be equipped to adequately prepare participants, and both preparation and facilitation will aid in ensuring a FGC convenes in a manner that is respectful and safe as well as appropriate to the child's needs, age, and context. A sizeable number of the participants (1, 5, 7, 8, 10, 11, 12) considered proper facilitation a key requirement in ensuring FGCs are child sensitive:

"First of all, I think that the person who facilitates the conference must be trained. That person must be trained in alternative dispute resolution to understand that this is not a formal process and it's not part of the court or the CJS, how the CJS works, must be aware of the fact that it's informal. And that we must meet the needs of the child at the age of that particular child."

(Participant 8)

"I guess it would come down to good preparation and well-trained facilitators."

(Participant 5)

"You need people that are really skilled in all the different disciplines to deal with this family conferencing properly."

(Participant 12)

“I think the most important thing is well trained people to implement it. Because it can be tricky, it is very emotional. One has to be careful to manage the emotions of the child and the victim’s emotions because things can very quickly derail.”

(Participant 11)

This is comparable to literature findings which stressed that facilitators play a vital role in ensuring conferences are run in manner that is sufficiently child sensitive and appropriate. Yet, research indicates that there is a lack of adequately trained and available facilitators in South Africa, and in this regard, more facilitators should be trained (Gxubane, 2012a:169-171; Gxubane, 2016:17; Steyn, 2010:115; Tshem, 2009:124). However, it is necessary to clarify the meaning of ‘appropriately trained.’ Hence participants were asked what qualifies a facilitator to be adequately trained.

Opinions presented regarding whether or not facilitators of FGCs should have a tertiary qualification, such as a social work, psychology, or a law degree were equally divided. Half of the participants (1, 6, 9, 10, 11, 12) felt it necessary for a facilitator implementing an FGC for child offenders to have a tertiary qualification. The main reason given was that child offenders are a vulnerable group and that facilitators therefore need specialised knowledge and skills to prevent traumatising:

“I really think you need someone with a psychology or social work degree that can pick up on some of those dynamics. In particular with children. I do think you need to have somebody whose quite highly trained you know, because if you don’t know how to manage all the dynamics and how to protect the child from some of that you can do massive damage. So, I think there you need well experienced person.”

(Participant 1)

“I still believe that it should be professionals who implement these programmes. Preferably social workers but they must be appropriately trained and supervised. There’s too much at stake with a child.”

(Participant 11)

“Yeah I think especially in complex cases. I think it’s a personal bias coming from a social work background myself. Just seeing the benefit of having that background which was part of the skill set really works. But it doesn’t mean other people can’t do it, you know be trained in restorative justice specifically, the less serious offences probably. So, you will still get an outcome you know. But I’m just thinking the depth of the intervention, especially with young people I think it should be a professional because there’s just so many dynamics going on there.”

(Participant 10)

“Ideally it would be professionals. People take these processes they think that anybody can do it. No, it’s not anybody. You need advanced knowledge and skill. You don’t just bring the parties together without preparation, without work. There is work that needs to happen before they come together and there’s work that needs to go on after. So many people with a superficial understanding of these processes, they apply it so wrongly and then they suddenly claim that it’s not working. They take it very lightly, they think it’s easy but it’s not, you need to know the theory, what do the theories say, and how to deal and save the situation.”

(Participant 9)

In contrast, the other half of the participants (2, 3, 4, 5, 7, 8) were of the opinion that a tertiary qualification was not necessary for the facilitation of FGC within a child justice context. Findings indicate that these participants were of the opinion that appropriate training in restorative justice practices will suffice. Participant 2, 3, 4, 5, 7 and 8 justified their opinion that facilitators need not be formally qualified by noting the value of humanistic lived-experience and professional experience as attributes necessary for the facilitation of a FGC:

“I used to think it needed to be a professional person like a social worker or a psychologist or a spiritual care worker or a criminologist, but the evidence is actually against that, internationally and even locally. At least one organisation, Khulisa Social Solutions, demonstrated that it could be done, I think effectively with people who are not professionals but who have been trained in RJ and mediation. And I think that that’s important. It does give another dimension in terms of bringing in just a community member as opposed to a professional

who's doing it as a job. But now whether that applies to when you're working with a child, I'm actually not sure. I'm inclined to say, could be, it doesn't have to be a professional. I'm saying that tentatively as I haven't thought that through, but I suppose part of my reason would be that the fact that you are a professional in the child justice space, so would be typically a social worker, doesn't automatically make you a good RJ facilitator or mediator. Whereas you could be a facilitator who isn't a professional, who's got lots of experience and who could do it well."

(Participant 5)

"I think a layman can be trained, and oftentimes it's the better approach because if you take a so-called qualified professional they stuck in their own genres, their own themes, their own message, and that I blame on universities. But if you take a layman, that honestly has the passion for it, and you give him the basics you often get a better result. That doesn't exclude someone with a qualification, but you'll find that there's such a disparity often between your victim and complainant and your so called professional that you create this power gap that's very difficult to get over. So, if you take laymen, I mean we call it laymen but its normal people. But I mean they easier to relate to."

(Participant 3)

"I think the ideal is that we should make use of qualified people who really understand the process. But I don't think it's possible in SA because of the huge numbers of cases that we have to deal with and there's no reason in my mind, there's no reasons why other lay people cannot be trained to facilitate mediations, FGC and VOD or VOM. I've dealt with people in the past who are excellent. You know, with life experience someone can be trained and there's no reason why they should not be allowed to assist."

(Participant 8)

"Having a qualification, meaning like a university degree? I mean I honestly, I feel that that in itself doesn't necessarily make you trained by itself. I think it gives you a lot of like important knowledge but it's a totally different thing translating that into practice. Depending on the person. I know some people who do mediation and FGC who were trained specifically in mediation, who, that's all that they do, that specifically is what they do, and they are very competent and good at doing that. I think in part due to the training but also in

part due to the amount of experience that they have and what they've learnt through that journey. It could be both, I don't think one is necessarily better than the other."

(Participant 2)

Research provides that youths are more likely to model the behaviour of people they respect and more likely to hold themselves accountable if people they respect from the community insist that they take ownership of their actions (Ikpe & Coker, 2010:228). The theory of reintegrative shaming proposes that family and community shaming provide for effective reintegration (Braithwaite, 1989:7-10). These factors provide justification for the use of trained 'laymen,' or rather ordinary people who live, work, and exist within the child offender's community. Ikpe and Coker (2010:228) propose an interesting idea in suggesting that ex-convicts and ex-gang members be involved in community-based restorative justice interventions. In this regard, such persons could act as positive role models for children who conflict with the law because their personal lived-experiences, and subsequent reform, could add validity to the process.

Both the literature review and the findings from the study highlight the significance of having appropriately trained facilitators. Whether this requires a tertiary qualification or not is uncertain as participants were equally divided on this point. However, it is clear from the reasoning of both those in agreement with tertiary qualification, or no tertiary qualification that what is of importance is ensuring that facilitators have the appropriate knowledge and skills to deal with the unique dynamics of facilitating FGC within a child justice context.

6.2.4 The current application of family group conferencing in South Africa

The literature highlighted a lack of research regarding the current application of FGC as an intervention for children in conflict with the law in South Africa. Thus, participants were asked, based on their knowledge and experience, to provide insight into the current application of FGC for children in conflict with the law with regards to if it is being implemented, and who is responsible for implementation. Based on the responses, and as will be discussed individually, participants were then asked to provide their opinions on the reason(s) for the lack of implementation; and insight into

what they think could be done to encourage the implementation of FGC as an intervention for child offenders.

When questioned regarding if and how often FGC is currently being applied as an intervention for children in conflict with law, the majority of participants (1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12) noted that FGC is rarely implemented in the South African child justice context:

“Even working in, you know, justice and with people in conflict with the law it’s not that often that, or that I see that [FGC] being incorporated. I think that we should be doing that more or using that more because you now people don’t exist in isolation and family definitely comes into play with that. But I definitely with people in conflict with the law I don’t see it that often.”

(Participant 2)

“I think it’s happening here and there around NICRO, around the larger centres where they do have offices etc. Here and there will be an NGO specialising in something. But I don’t think it’s available to people in smaller towns or rural areas at all.”

(Participant 8)

“It’s very low, not a lot of that is being done, we’ve tried in NICRO, we tried to do Family Group Conferencing.”

(Participant 8)

As a current practitioner within NICRO Gauteng, participant 6 noted that between January 2019 to the date of her interview (3 August 2019) she had been involved in four FGCs. When questioned regarding approximately how many FGCs she thinks NICRO do within the Gauteng region, her answer was *“about 20% of what we do”*.

Findings from the study concur with the literature review which highlighted that restorative justice options, such as FGC, used for sentencing and correctional purposes are rarely used for children (cf. Department of Correctional Services, 2018; Department of Justice and Constitutional Development, 2018:37). Statistics show a decrease in diversion, and with regards to cases that are diverted, there is a lack of data provided on how many of these are diverted to restorative justice interventions

such as FGC (Batley & Skelton, 2019:32). In essence, the answer to the questions if FGC is used as an intervention for children in conflict with the law is that “...we don’t know,” as stated by Participant 5:

“If there’s no data being collected at an official level, at a provincial or at a national level, nobody would know what the actual numbers are. But if you spoke to individual officers and supervisors, they might have other statistics. But we don’t know, and the impression is it’s not really being used that much.”

(Participant 5)

As a follow-up question, participants were asked who is currently responsible for the implementation of FGC for child offenders in South Africa. Here divergent opinions were also noted. Participant 5, 6, and 9 identified the DSD as primarily responsible for the implementation of child justice interventions, such as FGC:

“The short answer would be its primarily Social Developments responsibility. The Department of Social Development ‘cause they are the ones who are basically the gatekeepers. They do the assessment of children and they also then increasingly taken over diversion services, which FCGs would be one.”

(Participant 5)

“In terms of the Child Justice Act there’s a portion that says that you have to do it but it’s also a decision needs to be made. So Social Development does implement it.”

(Participant 6)

NICRO and Khulisa were named as the main NGO’s involved in implementing FGC in South Africa for child offenders (participants 5, 6, 8):

“There’s a lot of NGOs that doing it but not all of them are doing the restorative programmes. Angels of Glory - I don’t think they are implementing it. There’s a couple of others but I think mostly it’s being done by NICRO, Khulisa and the department.”

(Participant 6)

“I think it’s happening here and there around NICRO, Khulisa.”

(Participant 8)

Literature also identified the DSD, Khulisa and NICRO as the current NGO providers of FGC (Hargovan, 2012:19; Khulisa, 2018:np; NICRO, 2016:np). In addition, to the DSD, as discussed in the literature, DCS is also responsible for providing FGC as a correctional service intervention for sentenced child offenders (Batley & Skelton, 2019:14). It is noted by Gxubane (2012:113) that restorative justice options are most often used as an intervention for diversion.

6.2.4.1 Reasons for the lack of implementation of family group conferencing as a child justice intervention in South Africa

With consideration for the above findings, participants were asked what the reason is for the infrequent application of FGC. In this regard themes that were highlighted included willingness to participate, a lack of resources and funding, and a lack of utilisation of restorative justice interventions by criminal justice officials.

- **Willingness to participate**

Participants 2, 6 and 11 considered the lack of willingness of participants to partake in FGC as problematic and causative of its lack of implementation. It was noted that parents and victims are not always willing to participate in FGCs. Reasons given for this included time constraints, the belief that FGC is a soft-option, or the emotional trauma caused by the offence:

“We’ve tried in NICRO. We tried to do FGC after we have finished with the child in a programme. But the parents are not very keen to do it because it takes another hour or two out of their time.”

(Participant 6)

“The other one is sometimes the victim is simply not interested. For one it can be that the crime was really negligible, or the victim is still angry and simply doesn’t want to meet with the offender. Also, another reason why victims might not be interested, and its linked with the general gatvolness [exasperation] of South Africans with crime, is that it might be perceived as a soft option.”

(Participant 11)

Participant 2 and 10, both social workers, noted that victims are generally willing to participate unless the crime was serious in nature, such as rape:

“Sometimes I think depending on the case, I think those who are willing are generally when there wasn’t too much physical harm. So, maybe like those criminal injuria cases or assault, where there was assault but not necessarily where there was, you know like assault with bodily harm. I have had a few experiences with, where victims might be a bit fearful of their safety with the accused. So, I think those are the cases more likely the people to say no.”

(Participant 2)

“In most instances the victims don’t resist that opportunity, that we found, except if there’s serious offences like rape, with rape it is quite challenging, victims take many, many years. I’ve had one victim where she was 13 and she only did her VOM when she was in her 20s, I mean a long time, it took her literally 20 years, even more in her 30s if I think about it.”

(Participant 10)

Findings correlated with research, namely that oftentimes victims are wary to participate in FGC (Dewa, 2013:59-60; Gxubane, 2012a:137; Steyn: 2010:113-114). Gxubane (2012a:166-167; 2016:13) found, however, that often after adequate support, preparation and time parties are more willing to participate. In the event that a victim does not want to participate, alternative options can be used, such as a surrogate participant or writing a letter (Dzur, 2017:490; Gxubane, 2016:11-12; Umbreit et al., 2007:33; Zehr & Gohar, 2002:23).

It is of importance that participation should always be voluntary in order for a FGC to be effective (Anderson, 2017:175; Department of Justice and Constitutional Development, 2011:4-5; Steyn & Sadiki, 2018:231). In this regard, however, it was noted by Participant 10, an employee of NICRO, that courts often mandate FGC for an offender. The result of this mandate is that the offender has to then take part in an FGC, which means they do not necessarily do so voluntarily, which could negatively impact the FGC:

“Unfortunately, this is what the court does. The court includes it as a mandate. Like, what the court should say is ‘explore VOM or FGC.’ But the court says it refers a case for FGC and VOM, you understand what I mean. It has to be done. We can’t force the victim to attend. So, it’s mandatory for the offender but not necessarily for the victim.”

(Participant 10)

Participant 2, a social worker at Khulisa, was asked whether or not she had experienced a similar court mandate, to which she responded that sometimes the courts mandate mediation:

“I guess with mediation, yes, the court might refer a case for mediation. I guess sometimes they think that if they send the case to us, like it’s definitely going to happen. Not taking into account that it has to be voluntary from both parties and then that they need to agree to do that. I think sometimes there is kind of this expectation of if they refer it to us for mediation, they forget that we, that it’s not a given that that’s going to happen. And sometimes, people, one or both people don’t want to mediate, and I think it’s important for us to respect that.”

(Participant 2)

Participant 3 raised similar concerns with regards to the idea that, due to a lack of knowledge and understanding about FGC, victims may consider the intervention mandatory. Additionally, as a lawyer, participant 3 was of the opinion that offenders often do as their lawyers prescribe, thus negating the accountability and voluntary aspects needed for an effective FGC:

“No, I think a lot of them [victims] think that’s it’s imposed. Well again depending on your area. If you’re in Cape Town, there’s a lot more victim preparation. If you’re in JHB you tend to get the, I call it the sausage factory effect, nobody explains to the victim, ‘listen this is a voluntary process you don’t have to do it but these are the pros and these are the cons.’”

(Participant 3)

“I think they [offenders] follow what their lawyer says is right. And sometimes you have the problem that the lawyer doesn’t fully understand either. And I’m sorry to say it but a lot of us lawyers tend to see it as ‘oooh soft option, wait wait

I can get my client here to do a FGC or a VOM.' You know what I'm saying, and that degrades the whole process. But that's the legal culture."

(Participant 3)

Coercing or forcing an individual to participate in a FGC is both a violation of rights and hugely problematic as section 61(1)(b) of the CJA provides that an FGC may only take place if both the victim and the child offender consent to participation. As discussed in the literature, participation in an FGC should always be voluntary, should never be coerced, and participants reserve the right to withdraw from participation at any time (Anderson, 2017:175; Department of Justice and Constitutional Development, 2011:4-5; Steyn & Sadiki, 2018:231; Ward & Langlands, 2008:362; Zernova, 2007:498-502). It is necessary, in this regard, for those who are mandating FGCs (i.e. courts) and those recommending them (lawyers) to be informed of the necessity of voluntary participation, and to be educated with regards to creating and recommending orders that allow for the inclusion of restorative justice interventions but do not force participation.

- **Lack of resources and funding**

A significant number of participants (1, 2, 5, 6, 7, 8, 9, 10, 11, 12) identified a lack of resources or funding as a contributing factor to the lack of implementation of FGC. Participants 1, 6, 7, 8, 9 and 11 specifically noted that the DSD and government is responsible for funding child justice service providers and, in this regard, not enough funding is provided to pay service providers to facilitate restorative interventions, such as FGCs. As a result, service providers are reliant on donor funding. Lack of funding negatively affects the implementation of FGC as service providers have to reduce or rescind their intervention output:

"So, they (DSD) haven't funded NGO's too. So that so people like NICRO and Khulisa have been scaling back on their services and doing a range of other programmes. But not really FGCs or VOMS."

(Participant 5)

"These organisations need money and they rely on payment from the DSD but it's very difficult to get money. I know that the Restorative Centre in PTA, they

had to close offices. They're literally begging for money at this point in time, here and there they would get some funding but there's not enough money available."

(Participant 8)

"At the moment most of the organisations rely on DSD. Although some of the organisations do have funding from international donors but very few. And international donors as soon, as we got our democracy, they channelled all their funding to our democratic government. From the NGO's which they got before, that changed as soon as our democratic government came into power. So being an organisation, even as a board member, we more often rely on DSD. We do have other funders like lotto and a few others, but most of them come from DSD."

(Participant 9)

"Government funding is really; they fund about 62% of our overall expenses in Gauteng [NICRO]. Which is nothing. I mean the rest we need to get from donations and go out and talk to people."

(Participant 6)

Literature concurs that NGO's are cutting back on services due to a lack of funding, especially from the DSD (Batley & Skelton, 2019:37; Badenhorst, 2012:9-10). The funding issue was also highlighted by Participant 8 who provided insight into some of the professionals needed to form part of a restorative justice service provider:

"Some people do have money and other people don't have money. I think the bulk of people do not have money. I'm a private practitioner and we charge our clients' money for facilitating these exercises. And we've done a couple. Although we deal lot more with other types of cases. So, we charge our clients and if they have money, we can assist them. We've never asked government for any money. We have recently opened the social justice mediation and peace centre in Bellville in Cape Town, and we have a number of professionals working from that centre. There are legal professionals, at least 2, myself, and another lawyer. We have a full-time psychologist on board. We have full time social workers on board as well as other trained mediators who are not social

service professionals or legal professionals. I think the biggest problem is there's not enough money."

(Participant 8)

The findings of this study highlight the necessity of funding to provide acceptable criminal justice responses and service providers, inclusive of adequately trained staff. The link between a lack of funding and a lack of staff is apparent in that service providers are reliant on funding to pay their staff. A substantial number of participants (1, 2, 6, 9, 10, 11, 12) were of the opinion that a lack of trained facilitators prohibits the implementation of FGC for children in conflict with the law:

"A last point of concern and possible reason of why it is less used is people are not trained in doing it, social workers and probation officers, do they have the necessary skills to mediate."

(Participant 11)

"And some of them would say you know 'Thulane we know the value of it but now we cannot do it we don't have staff, we don't have...that's why we not doing it.'"

(Participant 9)

"The stumbling blocks are the basics, the human resources and the referral resources."

(Participant 12)

A lack of trained facilitators is also problematic for the implementation of FGC as these facilitators are also responsible for other tasks. This negatively affects the availability of time to facilitate interventions such as FGC due to trained professionals and service providers being overburdened. Participants 2, 6 and 10 who are employed by either NICRO or Khulisa and stated that a lack of time constrains the implementation FGC:

"So, that's where the challenge is. We may not, like they say, have time to do it. 'Cause they doing an assessment. You know sometimes that's the thing. It's the demand for the service and then you don't get enough time to do a holistic intervention."

(Participant 10)

“Time. You deal with so many cases per day and [colleague] was just telling me now you’ve got so many hours in the day and that’s it.”

(Participant 6)

“There are very few people doing this type of work and it does take time, like it’s not a quick thing, it takes time. It might take more than one session. You might not be able to do everything at once and it shouldn’t be rushed. So, it might take multiple meetings.”

(Participant 2)

In conjunction with the lack of trained facilitators and time constraints, a lack of available service providers or resources was also viewed as problematic by a considerable number of participants (1, 2, 6, 9, 10, 11, 12):

“Another problem is access ability of these programmes in my view is very, very limited, the large recognised services providers are limited to Urban areas.”

(Participant 11)

“Sometimes the magistrates will tell you there isn’t options out there, like they looking for other services, it may not be available so how can they say do restorative justice when there may be no service providers doing that work.”

(Participant 10)

Findings highlighting the lack of funding, trained facilitators, service providers and/or resources as contributory to the lack of implementation of FGC in South Africa for child offenders, and concurs with the literature (Batley & Skelton, 2019:15; Badenhorst, 2012:9-10; Doncabe, 2013:59; Sauls, 2016:22-26; Schoeman & Thobane, 2015:46-47; Steyn, 2010:119). However, it was also noted that the mandate to provide child diversion in the Western Cape were removed from both NICRO and Khulisa Social Services even though both have advanced experience and success in handling child diversion. Thus, although there is lack of service providers for FGC, it is also significant to note that the currently available service providers are not being utilised. This was initially raised by Participant 10, an employee of NICRO:

“In the Western Cape we don’t even do youth diversion or child diversion because you see NICRO, we dictated by the Department of Social Development funds, subsidise our social work posts. So, we submit a plan and they basically decide what services they going to fund. And in the Western Cape wanted NICRO to do adult diversion. Like I’m saying they have other child service providers. And ya, because historically that’s our work. We started the first pilot so it’s very silly to take an organisation with that level of expertise and take away child diversion from them. But this is how the accreditation system works and ya it all depends, so sadly enough we don’t have workers in the Western Cape even that do that kind of work with children. But yes, in other parts of the country, they do.”

(Participant 10)

NICRO is still responsible for child diversion in Gauteng as is clear from the findings discussed above where Participant 6 provided approximate statistics of FGC for child offenders by NICRO in Gauteng. Participant 2, an employee of Khulisa Social Services in the Western Cape, was asked if Khulisa Social Services is responsible for child diversion in the Western Cape:

“Not, in Cape Town, not at the moment. I know that they, earlier this year or during last year, they did, what do you call it, you know the application to work with youth in conflict with the law. But that isn’t something that we do at the moment.”

(Participant 2)

As none of the participants were involved with Khulisa Social Services in Gauteng, it is uncertain whether or not they are responsible for child diversion in Gauteng. Participant 2 and 10 were uncertain as to why the responsibility for child diversion was removed from these organisations in the Western Cape. With consideration for this finding, in conjunction with the finding that the DSD is not providing funding, as well the literature findings noting the lack of funding from the government (specifically the DSD and DCS) (Batley & Skelton, 2019:15), it is noticeable that a lack of governmental cooperation through mandating and funding is largely the reason why there is a lack of implementation of FGC for children in conflict with the law in South Africa.

It is unclear why there is not better cooperation between government and NGO's with regards to funding, or from DSD mandating appropriate NGO's to present interventions for children in conflict with the law. DSD is the governmental department responsible for the governance of services for children in conflict with the law. This includes, amongst other tasks, the allocation of funding for the delivery of services to appropriate service providers, such as NGOs. In addition to being responsible for the governance of child justice, DSD is also the predominant provider of services to children in conflict with the law.

Findings from the literature note that the DSD funding of restorative justice service providers has lessened as a result of the decrease in diversion referrals due to the poor performance of police officials dealing with children according to the procedure provided by the CJA (Badenhorst, 2012:13-15; Batley & Skelton, 2019:30). The decrease in diversion referrals also impacts on the implementation of FGC as discussed below.

- **A lack of utilisation of family group conferencing interventions by criminal justice officials**

Participants 5, 6 and 11 attributed the lack of implementation of FGC for children in conflict with the law to the fact that there has been a decrease in the number of child diversions. Participants 5, 6 and 11 attributed the decrease in diversions to the SAPS not following proper procedure that would lead to diversion:

"I think total number of diversions is down. That hasn't been conclusively researched. So again, we don't actually know but the impressions are that the police are the gatekeepers. Because the police had to do things differently from the way they had been doing before [the CJA]. They basically refused to take complaints and open a charge docket against a child. So, the impression is that it's only more serious stuff that's coming through. So that obviously impacts everything. It's one of the reasons why the number of diversions has dropped so much. So, if FGCs are a diversion option along with several others then that's also impacted."

(Participant 5)

"You know that the diversion programmes numbers plummeted on record by the NPA. Access the last 6,7 years of the NPA. They report on that and it's shocking how it decreased. As I understand there is an implication for, I think police officers. They would rather arrest the child and drop the child again off at the parent's house and say listen don't do that again because if they then do 'charge', somewhere in the CJS it means more work for someone. And in my understanding that is the reason why the numbers have decreased."

(Participant 11)

The literature concurs with these findings, whereby statistics from the NPA (2019:56), as well as other sources (Batley & Skelton, 2019:30; Department of Justice and Constitutional Development, 2018:24), do indeed show a decrease in diversion referrals for child offenders, which negatively affects the application of FGC for children in conflict with the law.

Furthermore, it was noted by Participant 9 and 10 that courts do not make use of FGC as a restorative justice intervention for children in conflict with the law:

"From the court side, if the court are not diverting to FGC, if the courts are not sentencing to FGC, then there will be very little. Because it's one of the sentencing provisions in our Child Justice Act. Our courts need to start experimenting. But at the moment it seems like they not, they still using the old way of sentencing."

(Participant 9)

"Well I think with children, see they just divert basically. So, in some instances they not diverting to NICRO. So, they diverting to a soccer club for example. So, I don't know if the soccer club is going to use restorative justice. So, it is problematic. I can only speak from a NICRO context because we frame our work on a restorative context. I don't know about other diversion service providers. That could be problematic where children are diverted and I've known of where there's a sports club or, not to say that's not an important intervention, but are you looking at it in a holistic way, are you looking at it in a restorative way? And I don't think that's applied necessarily. The Child Justice Act obviously talks to a restorative justice. But I'm not sure about you know what

other organisations are doing and if the court is ensuring that restorative and FGC happens.”

(Participant 10)

Two main reasons were expressed which provide insight into the reasons why courts are not making use of FGC for children in conflict with the law. The notion that criminal justice professionals lack knowledge about FGC was raised, and that a more retributive as opposed to restorative approach to adjudication is still preferred. Participants 2, 5 and 12 who were of the opinion that there is a lack of knowledge had the following to say:

“I had a meeting with a larger group of probation officers in Pretoria last year and my impression was that they know something about RJ and FGC but not enough to be enthusiastic about it.”

(Participant 5)

“From a court perspective, the conferencing, there’s a big need for it and it can happen. It should happen but courts they often don’t know really know about it. See because they do not have a psychological background and they don’t know how to refer people or where to.”

(Participant 12)

“It also comes back to that challenge of other role players in justice understanding RJ, understanding the importance of intervention, and social work intervention and that it’s not just, you know it’s not just people attending a programme or doing a mediation so we can check a box and their case can move on, but it’s a lot more than that. I mean we often run into challenges with trying to get people to understand that and having to constantly explain that.”

(Participant 2)

Participants 1, 2, 9 and 12 were of the opinion that the criminal justice system is retributive as opposed to restorative and opined:

“Mostly courts yes, the prosecutors who are trained retributively, the magistrates who have been trained retributively, they just see that as a waste of time and just too lenient. The offence is too serious or the child’s not learning,

we going to be harsh now with the child. When I asked them what makes them decide whether to divert or not most of them will say we only offer a child once an opportunity for diversion, we will never divert again for the second time. You see this is how harsh they are. So, they not interested to find out what happened. To find out why the child had not completed the first diversion. They not interested to find out. So, still is quite primitive in a way."

(Participant 9)

I think there's probably quite a few reasons. I think the one is that the judicial system thinking just doesn't allow. They retributive and they just ya, so that's a big stumbling block."

(Participant 1)

"I think ya in justice in the courts, the perception is still kind of retributive and we are trying to do diversion and mediation, we are trying to bring in that aspect, but it still is challenging. It still is challenging to try and get people to understand that."

(Participant 2)

Findings from the study concur with literature that criminal justice professionals lack an interest in restorative justice interventions, and are often retributive in mindset, insisting that restorative justice in a 'soft-option' and that the high crime rate calls for tougher action, and at times that restorative justice does not uphold the law (Gxubane, 2016:11; Louw & Van Wyk, 2015:493-497; cf. Lynch, 2010; Swanzen & Harris, 2012:20; Tsui, 2014:653-657). In this regard, there is a discrepancy between the philosophy of the CJA, which speaks to the importance of following a restorative approach in dealing with child offenders, and practice where a retributive paradigm still appears to hold supreme procedurally.

6.2.4.2 Promoting the use of family group conferencing as a child justice intervention in South Africa

In light of the fact that the findings showed that experts consider FGC as an ideal intervention for children in conflict with the law in South Africa, and acknowledge that it is not often currently implemented, participants were asked to provide recommendations as to how the use of FGC as a child justice intervention in South

Africa could be encouraged. Recommendations provided were regarding the creation of awareness and education, implementation of a multi-dimensional approach, and accreditation, and are explored below:

- **Awareness and education:**

A substantial number of participants (2, 4, 7, 8, 10, 12) considered awareness and education of community members and criminal justice officials as methods to encourage the implementation of FGC for child offenders. Participants 2, 4 and 7 noted that it is necessary to create awareness within communities so that they can be informed about restorative justice and FGC interventions, as well as the role that they as the community can play in justice:

“I think just getting it into the media. I have been interviewed on talk radio. Cape Talk which is like 702 in JHB. Just in a lunch time 1-hour program. I think I was only on for half an hour, but it’s, I do feel like it is something that is gaining traction and people become more disillusioned with, well I don’t know, perhaps that’s putting it too strongly. I think people just want systems that are accessible and are user friendly and if this can be put across to the public more.”

(Participant 7)

“And to the community as well. I think some people don’t, I mean some people still don’t know that they can have a voice in justice and in the court proceedings, you know. Because we very much have had that situation with the accused and the complainant that only the accused appears in the court, has their opportunity to talk, say whatever. It’s really focused on them leaving out the victim and the family and you know whoever else might have been affected. So, I think even on a community level awareness, that they can have a role in things, that they can have their voice heard as well, I feel like from both sides that would be important.”

(Participant 2)

The literature and the findings of this study highlight the need for community awareness and involvement with regards to FGC and restorative justice. The participation of community members in restorative justice interventions, whereby the community co-owns the process, requires that communities be made aware of the

restorative justice interventions available to them, and become involved in discussions and research around interventions such as FGC (Kilekamajenga, 2018:44-45). There is, therefore, a need for the creation of community awareness and education campaigns (Hargovan, 2012:19).

Participant 4 proposed collaboration between criminology and law students in implementing street law initiatives to create awareness in communities:

“You know for students who register for LLB, it is a requirement that they should have exposure to the communities. So, most law schools will have a program called a street-law program. Where your final year students, mostly will be your fourth year or your third-year students, they actually go to the communities and speak to the communities. You know, about what is a Constitution, what are your rights...So, it's [street law] something that is done, and it is expected from every law school. So, it is something that perhaps from your side you can do as well. Maybe collaborate with, you can collaborate with maybe even the law students or it can be a community engagement.”

(Participant 4)

Street-law initiatives are implemented by law schools globally. Students are required to teach people in the community (i.e. school children, prisoners etc.) about the law and how it can be applied in their lives using a range of different teaching methods (McQuoid-Mason, 2008:27). As was proposed by Participant 4, street-law initiatives could be implemented by the collaborative effort of law and criminology students to teach community members (i.e. in schools, community centres) about restorative justice. Additionally, similar initiatives should be introduced for students studying for vocations where they might find employment in the field of child justice, such as social work or psychology.

In addition to the need for community awareness and education, some participants (1, 9, 10, 11) opined that awareness and education amongst criminal justice officials is of importance:

"It comes down to education. But unfortunately, you gonna have to start with your magistrates, your judges, those people. It doesn't help to start with the people on the street, they've got no influence on the higher echelon."

(Participant 2)

"I think that information and educating the role-players is very very important. I think it often, like it often comes back to that because I think that if we could all be on the same page with in terms of what we doing, and why we doing it might, people might be likely to incorporate it more."

(Participant 2)

Definitely awareness. I don't think prosecutors understand the full value. So, it's awareness among the key stakeholders. Those who hold the keys, what are they usually called, gatekeepers. For gatekeepers to know what it can offer and for what profile of youth or child offender it can be beneficial. But also the requirements thereof you know. That the victim must be willing to participate."

(Participant 11)

"I think we've got to engage with the courts and the magistrates and the prosecutors, because, ultimately, they can, like we said, suggest and ensure that restorative justice is especially being applied with youth. So, I think it's really engaging with the court. I was, just had a workshop with one of our workers from the Western Cape. You know really telling them that they need to be greater advocates for this, that you know these kinds of issues need to come up in casework management, meeting with magistrates. Before we used to do training of magistrates and prosecutors, we really engaged with them around alternatives, around diversion and I think we need to continue to do that, have a robust conversation."

(Participant 10)

Participant 2, who was involved in a presentation where criminal justice officials were educated on interventions, provided justification for the idea that by educating and creating awareness amongst criminal justice professionals, the use of FGC will be encouraged. She noted that the purpose of the presentation was to encourage the use of the interventions more regularly, and that the results were positive:

“For example, we were facing this challenge. This challenge exactly where I think people didn’t understand what we were doing and why we were doing it. So, a little while back we then got all of the prosecutors, the NPA together, and did a short presentation on what we do, why we do it, how the process works, what the programmes are that we offer and after that there are certain prosecutors that will refer cases to us who hadn’t done that before. And I think that in part has come with them having a bit more knowledge about what we’re doing that they’re even referring cases from different courts.”

(Participant 2)

An additional theme proposed the inclusion of academic modules focused on restorative justice within the curriculum studied by criminal justice officials, such as the LLB. Participant 1, 3 and 8 were of the opinion that the inclusion of restorative justice in tertiary curricula would promote the utilisation of interventions such as FGC:

“I do think things like [trying to] get restorative justice brought into the actual training at a University level, at a BProc level and things like that where, your legal degrees, where people are trained in RJ. The value of it, because if they, if they understand that then we’ve got a much better chance of more cases being referred for that.”

(Participant 1)

“I have been advocating for that for years, that we need to bring in criminology or even a module in restorative or alternative forms of justice. Because let me tell you in the law syllabus you will get a module in criminology usually in the first year, it’s very basic, it’s your theories etc. But it doesn’t go into any detail. And then if you lucky somewhere in criminal procedure there’s a short part on RJ and then usually in your African law which is one semester, you’ll have a touch on it. But it’s not, it’s kind of explained as a, ‘O ya this is an alternative bla bla, ok let’s move on.’ Nobody comes from criminology or sociology or whatever and explains to you how the process actually works, how the brain works. Its problematic.”

(Participant 3)

“Yes, I definitely think so. But this point in time lawyers are mainly trained in litigation. I know there are some universities who start including ADR

[alternative dispute resolution, i.e. interventions such as FGC] as an elective. I know on a post grad level, on master's level you can definitely do courses at some universities in mediation etc. I'm not aware of dealing with children in terms of ADR, if there are any course at varsity. I'm referring to electives I'm not aware of that."

(Participant 8)

Participant 8 continued the discussion by noting that he had encountered some law professionals seeking other forms of dispute resolution due to discouragement with the current criminal justice processes. This highlights the possibility that if law professionals are trained in restorative justice as part of their formal qualification, they may be more willing to apply it in practice:

"A lot of lawyers will tell me, you know I've been in this game of litigation, or working as an attorney or an advocate, it's not my game, I'm absolutely sick and tired of it. If I knew about alternative approaches earlier, I would have done that. So, there's a lot of attorneys or a lot of people with qualifications in law you know who will realise at a later stage this is not what they want to do and they more open to other approaches."

(Participant 8)

Hargovan (2012:19) also considers it important for law degrees to include information on restorative justice in order for law professionals to be better informed. If one considers that the CJA is restorative in approach, and that African traditional justice is aligned with restorative justice, the idea that law qualifications should include modules on restorative justice becomes relevant.

In addition to training, participants 7, 9, 10 and 11 noted that awareness surrounding the use of FGC for children in conflict with the law in South Africa could be enhanced if the effectiveness of restorative interventions was supported by research:

"I just want to say we need to do more around FGC publishing. We don't even have a South African text that actually looks at FGC as a specific method out of others, and amplify issues around it, challenges, opportunities, success and

advice as well the government. Because sometimes government will not try out something [if] they don't have the know-how."

(Participant 9)

"The other thing is we do not hear the good stories, we do not have evidence of its effectiveness. So, once we can just establish that, and even if it speaks to international data that roughly one in five, roughly one in three adults recidivate after some kind of mediation, you know you still have two out of three who benefited from it."

(Participant 11)

"We need to also improve our practise like you asking me the question, you know at a seminar we could be able to say okay 'what are the present challenges with Family Group Conferencing, what are the new things we learning out of it?' Because SA must also inform literature on restorative justice, like you said, there's not much research happening and that's how we can actually contribute to the debate internationally."

(Participant 10)

Part of the rationale for this research was the lack of available data regarding FGC within a South African context. Research is required to communicate the effectiveness of FGC for children in conflict with the law, to create awareness of interventions, and to encourage and convince professionals of the value of implementing FGC in child justice (Gxubane, 2016:18; Holler, 2015:153).

Creating awareness, and educating communities and criminal justice officials, with the added support of empirical research could assist in changing mind-sets around the idea that FGC is a 'soft-option' and that tougher options are more effective. In addition, as highlighted in section 3.6, communities are more open than expected to the idea of restorative justice. Providing community members with more knowledge and awareness about the availability of FGC, and their rights according to the CJA could go a long way in insuring that child offenders are provided access to interventions such as FGC.

- **Multi-dimensional approach**

Findings from the study propose that FGC and restorative justice requires a multi-dimensional approach in order for it to be effective. This requires cooperation across disciplines (i.e. criminology, law, psychology, social work and so forth), between governmental departments (i.e. the SAPS, DSD and DCS), and society, as well as between different spheres within society (i.e. education, justice, corporate and so forth).

Professionals interviewed were all from a range of different disciplines, including law, social work, criminology, psychology, and education. Although they brought with them different knowledge and experience, there was a common theme in that participants found value in the intervention of FGC, and its ability to bring change and growth to South Africa. Some participants (3, 4, 7, 9, 12), however, highlighted the necessity for collaboration between disciplines, including an integrated approach in education, to promote a multi-disciplinary approach:

“Definitely, you know and only recently we are seeing a trend in law where they are bringing in the so-called softer subjects like your criminology, psychology, penology. But again, they’re at first year level. [These are] multi-functional they should hold hands.”

(Participant 3)

“I do think criminology, sorry FGC, is an ideal form if you want to call it restorative justice but until we learn to cross pollinate our fields, those in control of it don’t always understand what they are doing.”

(Participant 3)

“Ya, but the thing is the training can’t happen there because they already need to do the work, there’s no mentoring there, you have the degree you must do the work. The universities need to start thinking differently about this for example in mediation if we wanna accredit with SAAM as a mediator and you come from a psychological background, there’s a basic legal training course that you need to do. If you have a legal background you need to do a basic psychology course but it still, it just touches on the edges.”

(Participant 12)

The findings concur with Gxubane (2016:19) who is of the opinion that if diverse groups of professionals work together, more can be achieved as they may offer assistance where there are limited resources or differences in professional skill-sets. In this regard, he proposes that professionals from various disciplines should host workshops to discuss an interdisciplinary approach to dealing with child offenders in South Africa.

In addition to following a multi-disciplinary approach, Participant 5 considered it essential for there to be cooperation between governmental departments and civil society in order to promote the utilisation of FGC. Participant 5 was of the opinion that the government is under the impression that, as a developmental state, they should handle matters without the assistance of civil society. A developmental state is “...a state where government is intimately involved in macro- and micro- economic planning in order to grow the economy” (Batley & Skelton, 2019:16). Participant 5 deems it necessary for the government to become aware of the value and necessity of partnering with civil society:

“I think government as a whole has interpreted the developmental state as meaning that government has to do it all and they don’t have a frame of reference to build partnerships with civil society... There needs to be a major different attitude to understanding, why NGO’s, civil society as whole are good partners to have and then there needs to be skills in nurturing proper relationships on that basis.”

(Participant 5)

Schoeman and Thobane (2015:35) and Hargovan (2012:19) concur with Participant 5, noting the necessity for government to work in conjunction with civil society in order for the CJA to be implemented successfully, as well as for interventions and programmes such as FGC to be developed and implemented. As was discussed in the findings of this study, operational challenges which hamper the implementation of FGC were noted in the procedures and practices followed by DSD and SAPS. In this regard, it will be beneficial for DSD and SAPS to collaborate with NGO’s and civil society in order to act in the best interests of children who conflict of the law.

Lastly, with regards to a multi-dimensional approach, participants 7 and 10 highlighted that FGC is an intervention that can be applied pro-actively and re-actively. In other words, not only within a re-active child justice context, but pro-actively in community-based conflict resolutions:

“People know me. When there is a case when schools run into a situation, where they think that this may be a way to handle it, certainly had a lot of referrals by schools. But I’ve also, as I’ve said, through NGOs, through church organisations and also through multi-national. I’ve been called in to handle situations particularly when there has been sort of dispute between people in the workplace. And whole teams where teams are malfunctioning as well, I’ve gone in and used it.”

(Participant 7)

“You know it can be done at a community level, it can be done at a school level, prison, court. We just need to make sure that this option is available at every step of the process when a crime or a conflict happens.”

(Participant 10)

Participant 7 elaborated by explaining the value of using restorative interventions pro-actively to develop effective conflict resolutions skills, hence acting as crime prevention initiatives:

“So, I was asked to get involved with this sub group which came out of that Kate O’ Regan enquiry into vigilantism in the area and the reason I was asked was because of RJ and just that some of the people who were involved felt that that would be a better way to go. We had a lot of meetings with the police and with the prisons and so on but that was just not with the people on the ground. And my argument there was that if one could just get the practice of RJ into schools those children coming out of those schools would practice that form of justice.”

(Participant 7)

Participant 7 used the following anecdote to illustrate the value of using restorative justice interventions pro-actively:

“There’s an amazing story of a junior school in the city of Hull in the UK, where Hull had the highest unemployment rate because of the collapse of the fishing industry. And so, with unemployment, went same sort of problems as we face, crime, gangsterism etc. But the kids coming out of this one particular junior school going up to the senior school were just so well behaved that the senior school, you know, investigated what was going on there that could account for this. And they found that they were using circle discussions for any sort of situation. And so, then the senior school introduced this in their school and those kids going home to their parents, parents said ‘gee what’s come over my rebellious teenager, suddenly they a bit more respectful, they more reliable, and responsible.’ And long story short they then from that senior school it went into the police into the civic organisation and into the commercial organisations so that the whole city now has become the first city that is a restorative justice city, they see themselves as. So, it’s a lovely story of how a fractal from a primary school can have such positive repercussions.”

(Participant 7)

The pro-active ability of FGC was highlighted in the literature review with regards to its ability to prevent crime (Batley & Skelton, 2019:3; Schoeman, 2014:np; Steyn, 2012:76). The findings of this study reiterate this, additionally noting that the inclusion of FGC in other spheres of society, such as educational and corporate environments, could assist in creating an awareness of FGC intervention, as well as its values, thus making the community more accepting and understanding of the use of FGC as an intervention for child offenders in South Africa. Batley and Skelton (2019:3) discuss this as creating a ‘lifestyle of restorative justice.’

- **Accreditation**

Of importance within the context of this study was a recent discussion concerning the launch of an accreditation board for restorative justice practitioners (South African Restorative Justice Accreditation Board (SARJAB)) at a UNISA practitioner conference dealing with child justice and at-risk children on 11 September 2019. Participants 1, 6, 8 and 10 noted that the launch of SARJAB was progressive in providing a space for restorative justice interventions to be used as it gave validation to RJ practitioners and service providers within the criminal justice system:

“On the 11th of September, the governing body for private restorative justice practitioners, which is known as SARJAB, South African RJ Accreditation board, will be launched at a conference at the University of South Africa. So, I’ve been involved in the establishment of that organisation with a number of other role players and stake holders, including the justice department, the department of correctional services, and other mediators and RJ practitioners, including NICRO, including the RJ centre in PTA, Mr Mike Batley etc. So apart from my involvement with these organisations I’ve been working as a RJ practitioner in any event, the only problem is we do not have a governing body and this is why SARJAB will be established very soon. We’ve done a lot of work there and that body will be established and rolled out on the 11th of Sep.”

(Participant 8)

“So, it would be at a training level, lobbying for finance and then things like this whole organisation SARJAB, where setting guidelines for South Africa on it [FGC] and then, which also then allows for people to become accredited so that they given some sort of standing.”

(Participant 1)

The need for the guidelines and rules by which FGC facilitators and their interventions could be regulated was raised in this study. The accreditation of RJ interventions is, according to participants, a step in the right direction. This should provide validity to programmes, thus providing encouragement of their use by criminal justice professionals. In addition, accreditation should ensure that practitioners are adequately equipped to facilitate interventions, thus providing protection for vulnerable participants, such as children who conflict with the law.

6.3 CONCLUSION

Chapter six presented the findings from the study and included expert perspectives and opinions about FGC as a child justice intervention in South Africa. Findings concluded that FGC is an ideal intervention method within the South African child justice context. FGC is also viewed as an ideal child justice intervention for South Africa due to its inclusion of family, victims and reparation aims, cultural flexibility and rehabilitative benefits for offenders.

However, findings from this study and the literature review noted a lack of implementation of FGC for child offenders. A number of reasons are provided for this. It would appear that the main reason concerns a lack of support from government organisations. The lack of funding and resources is a direct result of the lack of financial support offered by governmental departments. The criminal justice system and SAPS are to blame for their lack of use of FGC as they are not implementing it where possible.

Participants proposed that raising awareness is imperative and in this regard communities and criminal justice officials must be educated about restorative justice interventions. The launch of SARJAB will provide structures for the accreditation for restorative justice practitioners and interventions, thereby providing validation for practitioners and interventions. It is foreseen that this step could promote the utilisation of RJ interventions, such as FGC. Findings furthermore highlight the need for multi-inter-disciplinary and sectoral collaboration to act in the best interests of children who come conflict with the law. The following chapter will provide conclusions drawn from the data in relation to the objectives of this research, and the researcher's recommendations.

CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

"If we are to teach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with the children."
(Gandhi, 1931).

7.1 INTRODUCTION

In fulfilment of the aim of this research - to consider the application of family group conferencing as a child justice intervention in South Africa - Chapter 7 provides the researcher's conclusions of the research. A summary of the methodology followed in this research, as well the limitations experienced by the researcher in conducting the research will also be provided. Following these discussions, a conclusion drawn from the findings, with specific reference to their attainment of the research objectives, will be provided. Finally, the researcher's recommendations drawn from the results will be presented with focus on advocacy, actions necessary to encourage the use of FGC, and further research suggestions.

7.2 REVIEW OF RESEARCH METHODOLOGY

The aim of this research was to explore the application of FGC as a child justice intervention in South Africa and then in turn provide recognition for the scope of implementing FGC as a child justice intervention in South Africa. To attain this aim, objectives were devised; namely, to determine if FGC is a suitable intervention within a child centred context; to provide insight into the perceptions of experts regarding the application of FGC as a child justice intervention in South Africa; and to consider the context and potential scope of application of FGC as a child justice intervention in South Africa.

The rationale for this study developed in response to a perceived lack of research specifically focused on FGC in the South African child justice context. Thus, the contribution of this research was to add to the knowledge base in both the child justice

and restorative justice fields. It was foreseen that the findings of this research could furthermore provide scope and encouragement for extended implementation of FGC; recommendations for the improvement of FGC interventions; and the implementation thereof; and insight into the lack of implementation of FGC for child offenders in South Africa.

The research commenced with an in-depth literature review which considered the history of child justice in South Africa up to the enactment of the CJA and its legislative inclusion of restorative justice principles and processes. FGC was identified as a child justice intervention provided for by the CJA for diversion and sentencing purposes. Thus, discussions on FGC and restorative justice, as well as their theoretical and philosophical underpinnings were presented. The findings, as discussed in chapter 2, 3 and 4 aimed to provide a foundation for the aim of this research, namely, to consider the application of FGC as a child justice intervention in South Africa.

Chapter 5 provided the methodological outlay of the study. An exploratory qualitative approach was followed whereby the researcher made use of semi-structured face-to-face, telephonic, or video-chat interviews with experts to gain insight into the application of FGC in South Africa, based on their perspectives, opinions and experiences in the fields of restorative justice and/or FGC. The sample was multi-disciplinary and consisted of experts from criminology, social work, law, psychology, and education. Findings were analysed according to the steps proposed by Creswell, whereby themes were identified and further interpreted according to their relation to the literature and the objectives and aim of this research.

Limitations for the study included a lack of previous literature within the South African context regarding FGC, as well as limited expertise in the specific sub-field of study. Data was obtained from a multi-disciplinary context which was advantageous since it included the opinions of experts from varied disciplines who brought with them preconceptions of those specific disciplines. It was interesting to note that notwithstanding the multi-disciplinary context, participant opinions often overlapped enabling the identification of themes and conclusions, which will henceforth be discussed.

7.3 CONCLUSION OF FINDINGS

As mentioned, this research aimed to provide insight into the application of FGC as a child justice intervention in South Africa. The section below highlights how the study's objectives were achieved. In addition, object specific conclusions are also discussed.

7.3.1 Objective 1: To determine if family group conferencing is a suitable intervention within a South African child justice context

Objective 1 explored whether FGC is a suitable intervention for children in conflict with the law in South Africa. The objective was achieved through a literature study discussed in chapter 3 and 4. In addition, participants were asked whether or not they considered FGC an ideal intervention within a South African and child justice context.

Findings from the study and the literature review concur that FGC is an ideal intervention for children in conflict with the law in South Africa. The inclusion of family members as a support system for children in conflict with the law makes FGC suitable for utilisation in both South Africa and child justice. Due to the humanistic socio-cultural philosophy associated with Ubuntu, family inclusion is viewed as beneficial to support children who come into conflict with the law. In addition, the family also play a key role in the reintegration of the child into society and in preventing the child from re-offending. FGC furthermore promotes family members to take co-responsibility for the child's rehabilitation as well the opportunity for any dysfunction with the family to be handled appropriately.

Findings furthermore confirmed that FGC is suitable within a child justice context in South Africa due to its inclusion of victims, reconciliation aims, cultural flexibility, and ability to hold offenders accountable without criminalising, and to offer them the support they need to change their behaviour. These are in line with the purposes of FGC as discussed in Chapter 3.

Findings highlighted the need for research focussing on creating a uniquely South African form of restorative justice intervention. This theme arose based on two main

findings. The first being that Eurocentric South African citizens may not be accepting of restorative justice. The second being that more research with traditional leaders and traditional literature is required to confirm that child justice aligns with and is integrated with African justice practices. In this regard, findings highlighted the need for the development of a uniquely South African intervention that bridges the gap between restorative justice and traditional African justice practice.

7.3.2 Objective 2: To provide insight into the perceptions of experts regarding the application of family group conferencing as a child justice intervention in South Africa

Objective 2 explored perceptions regarding the application of FGC as an appropriate child justice intervention in South Africa. In the literature review a number of questions arose regarding the application of FGC, thus questions were posed to experts to provide clarity on these issues.

The findings note a lack of consistency with regards to the implementation of FGC and VOM, whereby some VOMs take place with family and support persons present, and others include only the victim and offender. In addition, the dearth of national literature caused two challenges; firstly, no benchmark exists to determine if FGC is a child sensitive and appropriate intervention for application in a South African context. Secondly, limited information is available to indicate if, and to what extent FGC is currently being implemented in South Africa. The available data in this regard indicated the FGC is generally not readily used, but limited reasons as to why FGC is not being applied are available. Conclusions regarding these themes will hereafter be discussed.

- **Differentiating between family group conferencing and victim offender mediation**

The literature review indicated that there seems to be some confusion as to the differences between VOM and FGC when it came to the implementation of these interventions. The main difference, as mentioned in section 3.4. and in accordance with section 6.2.2. is that a VOM includes only the victim and offender, whilst an FGC includes support persons and family in addition to the offender and the victim. However, it would appear that in application the differences between the interventions

are convoluted resulting in families and support persons being included in VOM. Therefore, participants were asked to clarify the differences between FGC and VOM, then further questioned regarding whether they thought the application of the interventions was unclear and whether they thought this was problematic.

Findings from the study are in agreement with the literature in that FGC and VOM are mainly differentiated based on the number of participants allowed to attend, with most experts agreeing that FGC includes supporters, such as family members whilst VOM does not. Contradictory to the definition, some experts were of the opinion that in practice, supporters were allowed to participate in a VOM. Similarly, to the literature, the application of FGC and VOM is convoluted and contradictory to the definitions in that in practice some VOMs include support persons. It can be concluded that the necessity to use both VOM and FGC according to their definition was not considered important. Of importance rather is the manner of implementation. In this regard, the importance of flexibility to ensure that interventions are need-directed was encouraged. Notwithstanding the level of flexibility, findings emphasised that the procedural structure and restorative outcome of the intervention should be adhered to.

In addition to the number of participants present at an FGC as opposed to a VOM, findings noted that the inclusion of family members in an FGC resulted in FGC having a broader application because the intervention focusses on all parties affected by the criminal event, such as family members. FGC is therefore an intervention that is better suited for children because it deals with, and is inclusive of, the system the child is socialised within. Findings also indicated that the inclusion of support systems make the process of FGC more complex and involved, which in turn impacts on operational requirements, as discussed below.

- **Ensuring family group conferencing is child sensitive**

Findings emphasised the need for FGCs to be conducted in a manner that is age, need and context appropriate and respectful and safe for all participants which is dependent on the adequate preparation of all parties as well as adequately trained facilitators.

Divergent opinions existed with regards to whether facilitators should have a formal qualification, or if it is sufficient for facilitators to be trained only as restorative justice practitioners. Findings concluded that regardless of the level of training, facilitators should have adequate skills to meet the unique needs of child offenders within a restorative justice context.

- **The current application of family group conferencing in South Africa**

Findings concluded that FGC is not being used regularly for children in conflict with the law, and that a lack of data exists to provide information with regards to its use. The lack of statistics makes it difficult to determine the context within which FGC is used, as well as the frequency of use as a child justice intervention in South Africa, thus causing difficulties with regards to the evaluation of the effectiveness of FGC in South Africa, and determining protocol to increase its successfulness.

Although the DSD was identified as the department primarily responsible for the implementation of FGC for children who come into conflict with the law, their fulfilment of this mandate was questioned by participants. Findings identified Khulisa and NICRO as the organisations that mostly make use of FGC for diversion purposes. The accuracy of this perception cannot be determined due to the above-mentioned lack of information. DCS, as the department responsible for implementation of FGC for sentencing and correctional purposes, was not identified and in this regard, further research is therefore required to focus on the use of FGC as a child justice correctional intervention.

Findings concluded that the lack of implementation of FGC for child offenders is largely due to a lack of funding and resources, a hesitancy of criminal justice professionals to include FGC in court orders, and incorrect procedure followed by the SAPS with regards to child offenders, which has contributed to a decrease in diversion of child offenders.

7.3.3 Objective 3: To consider the context and potential scope of application of family group conferencing as a child justice intervention in South Africa

Findings from the study conclude that FGC is an appropriate intervention within a South African child justice context hence affirming its potential scope for application. In light of findings that highlighted the lack of implementation of FGC as a child justice intervention, participants were asked to provide recommendations how the use of FGC could be encouraged.

Awareness and education campaigns targeting both criminal justice professionals and community members were considered necessary to promote the use of FGC as a child justice intervention in South Africa. Participants proposed that modules about restorative justice be included within tertiary qualifications for practitioners that deal with child offenders. The necessity for research which speaks to the effectiveness of FGC as a child justice intervention was also considered important for its ability to provide criminal justice professionals with more evidence and thus encourage the use of FGC.

Findings also highlighted the need for a multi-dimensional approach to dealing with children who come into conflict with the law. Professionals from diverse disciplines should work together with child offenders. Government should be encouraged to realise the value in working with civil society to adequately address offending behaviour in children. Lastly, to create a society where restorative justice is normative, FGC type interventions should be included as a conflict resolution mechanism in all spheres of living, including schools, corporates, and justice.

The importance of creating structures for the governance of restorative justice interventions and practitioners was prominent in the findings. In this regard, the launch of SARJAB, which could in future serve as an accreditation board for restorative justice practitioners was welcomed as a step in the right direction. It is concluded that accrediting practitioners would provide validity to restorative justice interventions such as FGC which could further encourage their implementation for children in conflict with the law.

7.4 RECOMMENDATIONS

The findings highlight that although FGC is recognised as an intervention which could be used effectively for children in conflict with the law within a South African child justice context, it is currently under-utilised. Based on the findings a number of recommendations regarding advocacy, specific actions that could be taken to improve the implementation of FGC, as well as research propositions are forwarded.

7.4.1 Advocacy

7.4.1.1 Advocacy for the amendment of victim offender mediation in the CJA

As previously discussed in the literature, the CJA provides for the implementation of VOM and FGC as diversion interventions for children in conflict with the law. Section 62 lays out the procedure for an FGC, whilst section 62 provides the procedure for a VOM. Section 62(2) states that the information provided in section 61(2)(4)(5)(6)(7)(8) and (9) relating to the implementation of an FGC is also applicable to the implementation of a VOM. Section 61(3), which discusses who may attend is excluded. Thus, the implication is that VOMs only include the victim and offender.

The literature findings and the findings of this study highlight the imperativeness of including parents and support persons in interventions for children in conflict with the law with regards to ensuring that the child is protected and supported. In this regard, the implementation of a VOM, which excludes parents and support persons, is problematic for implementation when children are involved. Therefore, advocacy is necessary to amend the CJA to specifically include support persons and parents in the implementation of a VOM in order for the intervention to be in the best interests of child offenders.

7.4.1.2 Advocacy for inter-sectoral cooperation

The findings presented evidence that the lack of implementation of FGC is due to a lack of service providers and facilitators which is largely the result of a lack

of governmental funding. Furthermore, it was brought to light that current service providers of FGC are not always given the government mandate necessary to work with child offenders.

In this regard, it is necessary for advocacy measures to extend to governmental departments, especially the DSD and the DCS, for inter-sectoral cooperation via mandating and funding of restorative justice service providers. It is necessary for government departments to be made aware of the significance of restorative justice in the CJA, as well as the effectiveness of restorative justice interventions. Advocacy will be strengthened by evidence from research; thus, the importance of this study and further research in this field.

7.4.1.3 Advocacy promoting the inclusion of restorative justice modules in tertiary qualifications which deal with the implementation of the CJA

Restorative justice plays a prominent role in the CJA because its justice philosophy is ingrained in restorative principles. However, findings highlighted that the prevailing retributive mindset hampers the effective utilisation of restorative interventions, such as FGC. It is recommended that modules on restorative justice should be included in tertiary law qualifications to create awareness of this alternative form of adjudication.

It is foreseen that knowledge about restorative justice and restorative interventions could positively influence the decision of criminal justice professionals to make use of interventions, such as FGC, in dealing with children who come into conflict with the law. It is necessary to advocate for such changes to law curriculums, within universities and colleges offering tertiary law qualifications, to mandate the inclusion of modules on restorative justice in all tertiary law education as well as the qualification of child justice practitioners.

7.4.2 Recommendation of actions that could be taken to improve the application of family group conferencing

7.4.2.1 The development of training programmes

The findings highlight the lack of adequately trained facilitators and service providers to implement FGC. This deficit is causally related to the lack of available training programmes in restorative justice and restorative justice interventions. The launch of SARJAB provides potential for an accreditation board which in future could assist with the accreditation of restorative justice training programmes, hence allowing for restorative justice interventions to be quality assured through the accountability and training offered to service providers and facilitators.

It is therefore recommended that training courses and workshops on FGC must be developed, and that those programmes be accredited with governing bodies such as, for example, SARJAB. In addition, more facilitators should be trained in an attempt to increase the utilisation of FGC. This requires funding and thus is linked to the call for advocacy to governmental departments to provide funding for FGC service providers.

7.4.2.2 Training of criminal justice officials

As was highlighted in the study, FGC is often not implemented due to the fact that criminal justice practitioners are uneducated about restorative justice or are predominantly retributive in mindset. As recommended above, restorative justice modules should be included in tertiary law qualifications and/or any qualification aimed at practitioners who work with children who conflict with the law.

It is further recommended that training courses be developed and implemented whereby current criminal justice practitioners are educated on the theory of restorative justice, the types of interventions available, the value of implementing these interventions, and the success of such interventions. Such training should be supported by and draw from scientific studies to improve veracity. Practitioners involved in matters relating to child offenders at all stages of the criminal justice process, including the SAPS, NPA, court officials etc. should be required to attend such training courses.

7.4.2.3 Awareness campaigns in communities

Community members play a vital role in FGC, as supporters of both the victim and offender. Child offenders who are diverted remain in communities while those detained in Child and Youth Care Centres will most likely return to the community they came from. In both these instances, support from community members is pivotal during the rehabilitation and/or reintegration of children who conflict with the law. Thus, it is important for community members to be aware of the purpose of restorative justice interventions and for them to participate in, for example FGC, for such interventions to be effective.

In reaction to the retributive mindset that is often associated with justice, community members must be educated on their rights as well as alternative options available to deal with children who come into conflict with the law. Thus, it is necessary for community campaigns to create awareness about the aims of, and the role they can play in restorative justice and restorative justice interventions, such as FGC. In addition, they should be informed about offender and victim rights, and other issues pertaining to the aims of the child justice process. Awareness should also be created regarding how RJ interventions can be used pro-actively in conflict resolution, for example, in schools.

In this regard, findings from the study provided for the implementation of street-law initiatives, whereby law students create community awareness with regards to restorative justice. It is recommended that street-law programmes, and other awareness initiatives, focused on creating awareness about restorative justice interventions, be implemented through the collaborative effort of disciplines associated with pro-active and re-active conflict resolution, including law, criminology, psychology, social work, education, and business departments.

7.4.2.4 Multi-disciplinary approach

The findings emphasised the need for a multi-disciplinary approach to child justice. In addition to the previous recommendations for advocacy regarding the implementation of tertiary curricula pertaining to restorative justice in diverse disciplines charged with child justice, as well as the recommendation for inter-disciplinary student community

awareness campaigns; it is further recommended that professionals from diverse disciplines associated with child justice, such as criminology, social work, psychology, law, education and so forth, work together in conducting research, implementing pro-active and re-active restorative justice conflict management interventions and awareness campaigns, and managing challenges associated with child justice.

The findings of this study include the opinions of professionals from diverse disciplines highlighting the insight and value that the knowledge base of each discipline can contribute to dealing with children who come in conflict with the law. Furthermore, in this regard, a recommendation provided for by Gxubane (2016:19) is reiterated here, namely that a multi-disciplinary conference and/or workshop inclusive of professionals from a diversity of disciplines which accommodates discussions with regards to the implementation and development of interventions such as FGC, should commence.

7.4.3 Recommendations for research

Based on the findings, the following research areas are proposed:

- Research focused on creating child justice interventions that are mindful of and flexible to the diversity of South Africa with regards to its various cultures and contexts, based on information provided by community members, traditional leaders, and other cultural leaders.
- A comparative analysis of the suitability of FGC for serious offences versus minor offences.
- An exploration of the significance of age and its impact on the implementation of restorative justice interventions, such as FGC.
- An exploration of the required level of education and training required of facilitators of restorative justice interventions.
- An analysis of the nature and extent of the implementation of restorative justice interventions - such as FGC - in child justice.
- An exploration into the application of FGC as a sentencing option within the correctional services sector.
- An exploration of enabling factors and challenges influencing the utilisation of restorative justice interventions, such as FGC.

To ensure the above findings and recommendations are considered and that family group conferencing is promoted and applied in child justice, a copy of the dissertation will be forwarded to participants. As participants play a role in the child justice and/or restorative justice arena, they are perfectly situated to consider the above findings and influence change regarding the application of family group conferencing in South Africa.

7.5 CONCLUSION

At the launch of the Nelson Mandela Children's Fund in 1995, then President Nelson Mandela (1995:np) phrased his well-known quote, "*...there can be no keener revelation of a society's soul than the way in which it treats its children.*" It was his wish that the new South Africa consider matters relating to children of high priority and he mandated this the responsibility of all sectors, including government, civil society, as well as everyday ordinary individuals (Mandela, 1995:np). Mandela (1995:np) further spoke of policies indicative of care, respect and love and a South Africa where children are free from detention (Mandela, 1995:np). Legislation brought reality to this vision by embracing restorative justice and Ubuntu as its guide. Yet, in practical application, as a nation, we are not yet fully reaching these hopes.

FGC is an intervention that provides an opportunity for child justice practitioners to handle children in conflict with the law with care, compassion, and love through the integrated efforts of government, civil society, and community. It is an appropriate intervention for children as it includes family and is suitable to the South African context based on its similarity to the Ubuntu philosophy. FGC should be implemented on a more consistent basis as it appears to be a step in the right direction with regards to ensuring children are dealt with in a manner cognisant of their importance and vulnerability.

However, a call is made for more research to be undertaken into what is ideal in the child justice arena based on the unique cultural, historical, and socio-political factors of South Africa. A call is also made to government, child justice practitioners and professionals, and community to contemplate the findings of this research, and to

collaboratively implement changes that are mindful of child offenders as children who are entitled to be treated in a manner that fulfils section 28(2) of the Constitution, to wit, that in all matters, including justice, the best interests of a child are of *paramount importance*.

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ANNEXURE A

Informed consent letter

113 Villafranche, Sunset Avenue
Lonehill, Sandton

6 August 2019

Dear Prospective Participant

My name is Tarryn Roy and I am doing an MA Criminology at the University of South Africa. I am inviting you to participate in a study entitled 'the application of family group conferencing as a child justice intervention in South Africa'.

WHAT IS THE PURPOSE OF THE STUDY?

I am conducting this research to explore the application of family group conferencing as a child justice intervention in South Africa. This in turn could provide recognition for the scope of implementing family group conferencing as a child justice intervention in South Africa.

WHY AM I BEING INVITED TO PARTICIPATE?

The reason you are being invited to participate is because you have expert knowledge or experience regarding family group conferencing and/or restorative justice that may specifically pertain to this study. You were identified and contacted through a research article, academic site, NGO, university, government department, or at the referral of a colleague.

WHAT IS THE NATURE OF MY PARTICIPATION IN THIS STUDY?

If you decide to participate, you will be interviewed by the researcher either face to face or via videocall. Interviews will be voice recorded, and notes will be taken, provided you consent to this. Questions will be asked regarding your knowledge, opinions, perceptions, and experiences with the application of family group

conferencing as a child justice intervention. Interviews may be lengthy and would most likely require a one to two-hour time period.

CAN I WITHDRAW FROM THIS STUDY EVEN AFTER HAVING AGREED TO PARTICIPATE?

Participation in this study is voluntary and you are under no obligation to consent to participating. If you do consent to participate, you will be provided this information sheet to keep, and be asked to sign an informed consent document. You are also free to withdraw from the study at any time and do not need to give a reason for your decision. Information collected will be destroyed if you decide to withdraw after interviews.

WHAT ARE THE POTENTIAL BENEFITS OF TAKING PART IN THIS STUDY?

The findings of this study can be used to provide a larger knowledge base about the application of family group conferencing as a child justice intervention in South Africa, as well as provide recognition for it to be applied more consistently. This could ensure that young offenders are better dealt with in the future, and that their rights and needs, along with those of victims and society are met in the administration of justice. By participating, you give voice to information, factors, and ideas that may have not been considered by individuals who work in the justice system and implement such programmes.

ARE THERE ANY NEGATIVE CONSEQUENCES FOR ME IF I PARTICIPATE IN THE RESEARCH PROJECT?

It is unlikely that you will suffer any negative consequences or harm in any form i.e. physical, psychological etc. as a result of this study since the research will only focus on your professional experience.

WILL THE INFORMATION THAT I CONVEY TO THE RESEARCHER AND MY IDENTITY BE KEPT CONFIDENTIAL?

You have the right to anonymity and confidentiality when you participate in this study. If you wish to remain anonymous, your name will not be recorded anywhere, and a pseudonym will be used during data analysis and when presenting.

Your answers may be reviewed by people responsible for ensuring that research is done properly i.e. the study examiners. Other than that, my research supervisor and I are the only persons who will have access to your answers and will to the best of our ability take all foreseeable steps to ensure that the information remains confidential.

Please note that the data from the research may be used for journal articles and/or conference proceedings. Your anonymity and confidentiality will be protected using a pseudonym.

HOW WILL THE RESEARCHER(S) PROTECT THE SECURITY OF DATA?

Hard copies of your answers will be stored by the researcher for a period of five years in a locked drawer for future research or academic purposes and electronic information will be stored on a password protected computer. Future use of the stored data will be subject to consent on your part as well as further Research Ethics Review and approval if applicable.

Data will be destroyed after five years, or prior if necessary. At this stage, hard copies will be shredded, and/or electronic copies will be permanently deleted from the hard drive of the computer through the use of a relevant software programme.

WILL I RECEIVE PAYMENT OR ANY INCENTIVES FOR PARTICIPATING IN THIS STUDY?

There will be no payment, financial, or other reward offered or required for participation in this study.

HAS THE STUDY RECEIVED ETHICS APPROVAL?

This study has received written approval from the Research Ethics Review Committee of the College of Law, Unisa. A copy of the approval letter can be obtained from the researcher if you would like to see it.

HOW WILL I BE INFORMED OF THE FINDINGS/RESULTS OF THE RESEARCH?

If you would like to be informed of the final research findings, please contact Tarryn Jane Roy at 49262459@mylife.unisa.ac.za. The dissertation will also be uploaded on Unisa's repository.

Should you require any further information or want to contact the researcher about any aspect of this study, please contact Tarryn Jane Roy at 079 105 4334 or 49262459@mylife.unisa.ac.za.

Should you have concerns about the way in which the research has been conducted, you may contact Prof. Marelize Schoeman: 012 433 9491 or schoemi@unisa.ac.za.

Thank you for taking time to read this information sheet and for participating in this study.

Kind regards

Tarryn Jane Roy

CONSENT TO PARTICIPATE IN THIS STUDY

I, _____ (participant name), confirm that the person asking my consent to take part in this research has told me about the nature, procedure, potential benefits and anticipated inconvenience of participation.

- I have read (or had explained to me) and understood the study as explained in the information sheet.
- I have had sufficient opportunity to ask questions and am prepared to participate in the study.
- I understand that my participation is voluntary and that I am free to withdraw at any time without penalty.
- I am aware that the findings of this study will be processed into a research report, journal publications and/or conference proceedings, but that my participation will be kept confidential unless otherwise specified.
- I agree to the video recordings and hand-written notes by the researcher of the interview.
- I have received a signed copy of the informed consent agreement.

Participant Name & Surname..... (please print)

Participant Signature..... Date.....

Researcher's Name & Surname..... (please print)

Researcher's signature..... Date.....

ANNEXURE B

Semi- structured interview schedule

1. Could you please provide a summary of your involvement and/or research in restorative justice interventions, especially that of family group conferencing?
2. What is the difference between family group conferencing and victim-offender mediation?
 - Are they applied as different interventions in South Africa?
 - Do you think it is important that they are applied differently?
3. Do you consider family group conferencing an ideal intervention within a South African context? Why?
4. Do you consider family group conferencing an ideal intervention for a child justice context? Why?
5. What could be done to ensure family group conferencing is sufficiently child sensitive?
6. *Arisen theme – do you think facilitators should be professionals or can anyone be trained?*
7. How do you perceive the current application of family group conferencing in South Africa?
8. Could you provide some information on who is currently responsible for the facilitation of family group conferencing and who has the skills to facilitate such conferences in South Africa?
9. Research seems to indicate a lack of utilisation of family group conferencing in dealing with children who come into conflict with the law. Why do you think this is happening?
 - Do you think that something should be done about this?
 - If yes, what can be done about this?
10. Is there anything else you would like to add?
11. Can you suggest any other persons who would add value to this study?

ANNEXURE C

Ethical clearance certificate



UNISA CLAW ETHICS REVIEW COMMITTEE

Date 20190527

Reference: ST53 of 2019

Applicant: TJ Roy

Dear TJ Roy

Decision: ETHICS APPROVAL

FROM 01 May 2019

TO 01 May 2022

Researcher: Tarryn Jane Roy

Supervisor: Prof M Schoeman

The Application of family group conferencing as a child justice intervention in South Africa.

Qualification: MA- Criminology

Thank you for the application for research ethics clearance by the Unisa CLAW Ethics Review Committee for the above mentioned research. Ethics approval is granted for 3 years.

*The CLAW Ethics Review Committee reviewed the **Low risk application** on 27 May 2019 in compliance with the Unisa Policy on Research Ethics and the Standard Operating Procedure on Research Ethics Risk Assessment. The decision was ratified by the committee.*

The proposed research may now commence with the provisions that:

1. The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.
2. Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study should be communicated in writing to the CLAW Committee.



Open Rubric

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3. The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.
4. Any changes that can affect the study-related risks for the research participants, particularly in terms of assurances made with regards to the protection of participants' privacy and the confidentiality of the data, should be reported to the Committee in writing, accompanied by a progress report.
5. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study. Adherence to the following South African legislation is important, if applicable: Protection of Personal Information Act, no 4 of 2013; Children's act no 38 of 2005 and the National Health Act, no 61 of 2003.
6. Only de-identified research data may be used for secondary research purposes in future on condition that the research objectives are similar to those of the original research. Secondary use of identifiable human research data require additional ethics clearance.
7. No research activities may continue after the expiry date 1 May 2022. Submission of a completed research ethics progress report will constitute an application for renewal of Ethics Research Committee approval.


Note:

The reference number ST53 of 2019 should be clearly indicated on all forms of communication with the intended research participants, as well as with the Committee.

Yours sincerely,



PROF T BUDHRAM
Chair of CLAW ERC
E-mail: budhrt@unisa.ac.za
Tel: (012) 433-9462



PROF M BASDEO
Executive Dean : CLAW
E-mail: MBasdeo@unisa.ac.za
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URERC 25.04.17 - Decision template (V2) - Approve

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ANNEXURE D

TurnItIn report



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This receipt acknowledges that **Turnitin** received your paper. Below you will find the receipt information regarding your submission.

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File size:	1.3M
Page count:	228
Word count:	71,050
Character count:	391,659
Submission date:	07-Jan-2020 03:15PM (UTC+0200)
Submission ID:	1239764037

THE APPLICATION OF FAMILY GROUP CONFERENCING
AS A CHILD JUSTICE INTERVENTION IN SOUTH AFRICA

by
TARRYN JANE ROY

Submitted in accordance with the requirement for the degree

MAGISTER OF ARTS

In the subject

CRIMINOLOGY

at the

UNIVERSITY OF SOUTH AFRICA

SUPERVISOR: PROF MI SCHOEMAN

JANUARY 2020

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ANNEXURE E

Confirmation of English editing

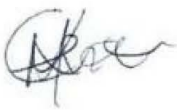
CONFIRMATION OF ENGLISH EDITING

To whom it may concern

This is to certify that the thesis with the title **“THE APPLICATION OF FAMILY GROUP CONFERENCING AS A CHILD JUSTICE INTERVENTION IN SOUTH AFRICA”**, submitted for examination by TARRYN JANE ROY, was edited for language under my hand. Neither the research content nor the researcher's intentions were altered in anyway during the editing process.

I applied standard United Kingdom English language conventions during the editing process. I stand by the quality of the English language in this document, provided my amendments have been accepted and further changes made to the document have been submitted to me for review.

Dr MG Karels



karelsmg@outlook.com